11012

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00HE/LIS/2014/0070**
Property	:	**1a Cambridge Place, Falmouth, Cornwall TR11 4QR**
Applicant	:	**Ms L Manson (Freeholder)**
Represented by	:	**Cornwall Homeseekers Ltd**
Respondent	:	**Mr A and Mrs M Joyes (Leaseholders)**
Date of Application	:	**24th November 2014**
Type of Application	:	**Section 27A, 20C of the Landlord and Tenant Act 1985 (The Act).**
Tribunal	:	**R T Brown FRICS** **T N Shobrook FRICS**
Date and venue of	:	**2nd March and 17th April 2015**
Hearing	:	**First-tier Tribunal (Property Chamber), Truro Magistrates Court, Truro, TR1 1HZ and the Alverton Hotel, Tregollis Road, Truro TR1 1ZQ.**
Dated	:	

DECISION ON SUBSTANTIVE ISSUES

DECISION

1. The Tribunal determines that in respect of the period in dispute and for the reasons given below the Respondent **is** liable for payment of the following:

   share of maintenance costs incurred £325.00
   share of previous Insurance Premiums incurred £1191.51 less amount paid £827.20 = £365.31.

2. The Tribunal determines that in respect of the period in dispute and for the reasons given below the Respondent **is not** liable for payment of the following:

   excess costs incurred due to water ingress (Insurance excess)
   costs including interest on late payment at 4% over Barclays Bank minimum lending rate
   additional costs through FtT process including LVT fees and property management fees
   payment in advance for future maintenance costs

3. The Tribunal makes no determination in respect of the following as the issues fall outside its jurisdiction under the application and Section 27A of the Act:

   (a) *joint fund for future maintenance works*
   (b) emergency access requirements
   (c) proposed external redecoration works

4. The Tribunal makes an order under Section 20C preventing the Applicant from recovering its costs, in so far as such costs may be recoverable under the Lease, incurred in these proceedings by way of service charge.

REASONS FOR DECISION

The Application and Introduction

5. This Hearing, over two days, follows a Case Management Conference held on 5th January 2015 at which Directions were issued and complied with by the Parties. Following the first day of the Hearing further Directions were issued to and complied with by the Applicant.

6. The Applicant (Freeholder) seeks determination of the amount payable as service charge in particular:

Item	Period	Total	1a Share
Hiscox Insurance	23.01.11 - 02.01.12	659.27	329.64
Flux Insurance	02.07.11 - 01.07.12	477.25	238.62
Flux Insurance	02.07.12 - 02.07.13	1,012.55	506.28
Insurance Excess	Sep-12	350.00	175.00
Insurance Excess	Oct-13	50.00	50.00
Maintenance	03.12.2013	1,265.00	632.50
Maintenance	21.08.2014	410.00	205.00
Tribunal Fee		125.00	125.00
Agent's Fee		1,172.00	586.00
Agent's Tribunal Fees		324.00	162.00
Interest on late payment	23.01.11 - 21.08.14		193.05
Total sought			**3,203.09**

7. The Applicant further seeks determination of the following:

a) To determine the maintenance costs
b) To determine payment for future maintenance costs
c) To determine excess costs incurred due to water ingress caused by above flat 1a
d) To determine interest at 4% above Barclays minimum lending rate
e) To determine Tribunal fees and Agents costs in Tribunal
f) To determine proposed redecoration costs
g) To establish a joint fund for future maintenance
h) To determine emergency access requirements

8. Directions were issued on 26th November 2014 and following a Case Management Conference on 5th January 2015 further Directions (2) were issued on 7th January 2015.

9. The Parties confirmed to the Tribunal at the outset that they agreed that any contribution to joint costs of works are to be shared on a 50-50 basis although the Respondent says that Flat 1a (the upper floors) should only pay 50% of the costs relating to that part of the building which is on more than one floor.

The Property and the Tribunal's Inspection

10. The members of the Tribunal inspected the property on 2nd March 2015 in the presence of the Parties.

11. The property comprises a substantial south facing end terrace dwelling house constructed during the Victorian period in rendered brick with slate roof and timber framed sash windows. Circa 1987 the property was divided into two flats and a lease was granted of the 1st and 2nd Floors (Flat 1a) the freeholder retaining the Ground Floor (Flat 1).

12. Flat (1) comprises: Hall, 5 Rooms (including Dining Room), Kitchen (with internal shower off) and Bathroom (full suite). Apart from permitting access to the Flat (1a) it is believed Flat (1) retains the use of the gardens on the South and North sides of the site.

13. Flat (1a) comprises: Hall (with separate access on the western elevation), Landing, Bathroom (full suite), 4 Rooms, Kitchen. Attic comprising 2 interlinked rooms. It is believed that the garden to the west is demised with the flat. The Tribunal did not have the benefit of a coloured Lease plan with the papers however this is not a matter in dispute.

14. Although there was a lane at the rear there was no evidence that access was available to provide off road parking.

15. The Tribunal noted the following:

a) Render cracked and blown in various places
b) Missing section of gutter on the rear elevation
c) Poor external joinery in places
d) Generally the exterior of the property was in need of decoration and repair consistent with the age and form of construction

The Law

16. The relevant law is set out below:

Landlord and Tenant Act 1985

Section 18 Meaning of "service charge" and "relevant costs"

(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 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 period

Section 19 Limitation of service charges: reasonableness

(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.

Section 20C Limitation of service charges: costs of proceedings

(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 or leasehold valuation tribunal, or the Lands 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;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands 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.

Section 27A Liability to pay service charges: jurisdiction

(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.

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."

Service Charges (Consultation Requirements)(England) Regulations (SI2003/1987)

Schedule 4
PART 2

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

Notice of intention

8. - (1) The landlord shall give notice in writing of his intention to carry out qualifying works -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

9. - (1) Where a notice under paragraph 1 specifies a place and hours for inspection -

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

10. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

11. - (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate -

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate -

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9) -

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out -

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord -

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by -

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any) -

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

12. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

13. - (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any) -

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

The Lease

17. The Tribunal was provided with a copy of the Lease dated 18th September 1987 which is currently held by Mr and Mrs Joyes and was granted for a term of 999 years from 25th June 1987 at a peppercorn rent, the relevant parts of which are set out below:

18. Clause 1: *In consideration..... the Landlord hereby demises unto the Tenant FIRST all that Flat (hereinafter called the 'the Flat') consisting of the first and attic floors of the building (hereinafter called 'the Building') as situate in Cambridge Place in Falmouth in the County of Cornwall and for the purposes of identification only delineated on the plan annexed hereto and thereon edged red TOGETHER WITH the staircase leading from the ground floor of the building to the flat ALL WHICH premises are known as 1a Cambridge Place, Falmouth aforesaid SECONDLY ALL garden and toolshed enjoyed with the flat and for the purposes of identification only delineated and coloured green on the said plan TOGETHER ALSO with*

19. Clause 1(a): *The right in common with the Landlord or occupier of the building to use for the purposes of access and to egress only over the entrance gate and pathway leading from the street to the front door of the flat*

20. Clause 1(c)(ii)(a): *One half part of all walls floors and ceiling up to the centre line of the first floor joists separating the flat from the remainder of the building*

21. *'TO HOLD.....by way of further or additional rent from time to time the sum or sums of money equal to one half of the amount which the Landlord or the owner or owners from time to time of the building may expend in effecting or maintaining the insurance of the building and the flat against loss or damage by fire or other risks (if any) as the Landlords may think fit.....'*

22. Clause 3: *'The Tenant hereby covenants with the Landlord as follows:-'*

23. Clause 3(iii): *'To maintain and keep the flat including the main walls above the centreline of the first floor joists the windows and window frames and every part thereof and the roof and roof joists in a good and substantial repair order and condition and in particular as respects the structure in good decorative condition*

cleanliness and tidiness thereof and without prejudice to the generality of the foregoing to keep and maintain in such state of repair order and condition all floors floor joists up to the centreline thereof the walls pipes wires drains conduits cables and the windows and window frames the entrance door to the flat and the roof and the roof joists and chimneys thereof (but excluding any chimneys that solely serve the remainder of the building)'

24. Clause 3(iv): *'To permit the Landlord and her duly authorised Surveyors or agents with or without workmen and others upon giving notice three days prior written notice (except in the case of emergency) and at all reasonable times to enter into and upon the flat or any part thereof for the purposes of viewing and examining the state of repair and condition thereof and to make good any defects decays and wants of repair or reparation of which notice in writing shall have been given by the Landlord to the Tenant and for which the Tenant may be liable hereunder and the Tenant shall carry out such repairs or reparations within three months after the date of the giving of such notice or sooner in the case of emergency'*

25. Clause 3 (v): *'To permit the Landlord and her duly authorised Surveyors or Agents with or without workmen and others upon giving three days previous notice in writing (except in emergencies).....'*

26. Clause 3 (x): *'During the said term hereby granted to perform and observe the restrictions and stipulations and conditions set forth in the Schedule hereto'*

27. Clause 3(xii): *'in every fifth year of the term and in the last year of the term howsoever determined to paint all the outside parts usually painted.....'*

28. Clause 3(xvi): *'To contribute equally with the Landlord or the owner of the building towards the costs of repair maintenance and upkeep of all pipes wires sewers drains and other conducting media pathways walls or fences the use of which is common to the flat and building'*

29. Clause 4: *' The Landlord hereby covenants with the Tenant as follows:-'*

30. Clause 4(ii): *'The Landlord will at all times during the said term (.....) insure and keep insured the building and flat against loss or damage by fire storm tempest flood explosion and such other risks (.....) as the Landlord may think expedient or such greater sum as the Tenant or Mortgagees of the Tenant may reasonably require.....'*

31. Clause 4(iii): *'To produce to the Tenant on 14 days notice at the offices of the Landlord or the Landlord's Solicitors the Policy of Insurance maintained by the Landlord and the receipt for the last premium payable for it including any renewal receipt and to supply to the Tenant a certified copy of such policy'*

32. Clause 4(iv): *'If required by the Tenant to use the Landlord's best endeavours to procure that the Tenant's interest and that of any of the Tenant's Mortgagee is noted on the Policy and a note of such endorsement supplied to the Tenant.*

33. Clause 4(vii): *'Subject to contribution by the Tenant that the Landlord will maintain and keep in good substantial repair and condition all pipes wires and drains pathways boundary walls and fences used in common with the flat'*

34. Clause 4(viii); *'To maintain those parts of the main structure of the building up to the centreline of the first floor joists and the footings and foundations supporting the building and all boundary walls solely serving the building'*

35. Clause 4(ix): *'That subject to contribution by the Tenant the Landlord will contribute and pay one equal half share of the cost of all exterior repairs necessary to be done to the main building whether such repairs be the roof or the main walls or windows (but not the glass thereof) of the building and the flat and one half share of painting the exterior of the building and the flat as such painting to be carried out at least once in every five years and the colour of the paintwork should be as previously painted unless the Landlord and the Tenant for the time being of the flat shall agree to a different colour'*

36. Clause 5 IT IS HEREBY DECLARED AS FOLLOWS:-

37. Clause 5(a): *'Insofar as there may be any part of the building and the flat which is jointly used or served jointly or any services or any outgoings which are charged upon the building and the flat without apportionment and in respect of which no specific provision is made in this Lease as by whom the costs for such repair renewal maintenance upkeep or the like or payments shall be borne equally by the Tenant and the Landlord of the building in equal shares'*

38. Clause 7: *'IF any sum payable by the Tenant to the Landlord under this Lease shall not be paid to the Landlord within 14 days after becoming due the same shall be payable with interest thereon at the rate of 4% per annum above the minimum lending rate of for the time being in force of Barclays Bank PLC calculated on a day to day basis from the date of same becoming due to the date of payment and the aggregate amount for the time being so payable shall at the option of the Landlord be recoverable by action or as rent in arrears'*

39. THE SCHEDULE above referred to First Part Tenants Covenants

40. Clause 9: *'To contribute and pay to the Landlord one equal half share of the cost of all exterior repairs necessary to be done to the building and the flat whether such repairs be to the roof or the main walls or windows of the building or the flat and all drains water pipes wires chimney flues chimneys the use of which is common to the building and the flat'*

41. Clause 10: *'To contribute and pay one equal half share of the cost of painting the exterior of the building and the flat'*

The Hearing

42. The Parties attended both days of the Hearing.

43. The Applicant Ms L Manson appeared, gave evidence and was supported by her friend Mr J Ninnan. Mr S Sullivan of Cornwall Homeseekers managing agents was also in attendance.

44. The Respondents Mr A and Mrs M Joyes appeared in person and were un-represented.

The Applicant's Case

45. The Applicant's position is, without legal argument, that the costs claimed are recoverable under the terms of the lease.

46. The Applicant has issued Demands and Reminders but to date no payment has been received.

To determine maintenance costs

47. The amount claimed under this heading is £837.50 comprising of half of the cost of £1265.00 (£627.50) incurred by the Applicant in employing Roofwise to undertake various works invoiced on 3rd December 2013 and half the cost of repairs to the bedroom ceiling in the sum of £205.00 (£410.00) undertaken by Roofwise and invoice dated 21st August 2014.

48. At the inspection the builder Mr M Brooks of Roofwise admitted that scaffolding had not been used to carry out the repairs as identified on his invoice dated 3rd December 2013.

49. The Applicant acknowledges that works had not been carried out to the rear guttering for which a credit note (£75.00) had been issued by the contractor referred to in an email at page A53 of their bundle and the Applicant intends to deduct this from the final invoice for decoration works.

To determine payment for future maintenance costs

50. The Applicant's position is that under the terms of the lease the Respondent is liable for half the cost of proposed works in advance of those works commencing.

51. In support of this contention the Applicant referred the Tribunal to the Lease specifically clause 3 paragraphs (xvi), (vii),(ix) and the Schedule First Part Clause 10.

To determine excess costs incurred due to water ingress (Insurance excess)

52. Two insurance claims were settled by insurers subject to payment by the insured (Applicant) of the excess.

53. The first claim, in August 2012, involved a leak alleged to be from Flat 1a into the Applicant's Flat 1. The Applicant's position is that the leak was caused by the failure of a water trap in Flat 1a resulting in a leak into Flat 1. The amount of the excess was £350.00 a half being £175.00.

54. The second claim, in September 2013, related to a ceiling collapse in the front ground floor room of Flat 1 resulting from a leak in the first floor bay window which it is said is the Respondents responsibility to maintain. The amount of the excess was £100.00 a half being £50.00.

55. The Applicant seeks a contribution of half the total excess being £225.00.

To determine previous Insurance Premiums

56. The Applicant's position is that the Respondents as leaseholders of Flat 1a are required to contribute 50% of the premium for insuring the buildings.

57. Premiums totalling £2149.07 have been paid by the Applicant for the years 23rd January 2011 to 2nd July 2013 (expiring 1st July 2014).

58. In compliance with the Further Directions the Applicant produced the policy schedules for the relevant years together the demands for payment.

59. Mr Sullivan produced a Schedule (as requested by the Tribunal on the second day of the Hearing) apportioning the insurance premiums as follows:
23.01.2011 to 01.07.2011 (159 days) £287.79 - 50% = £143.90
02.07.2011 to 01.07.2012 (full year) £1,084.67 - 50% = £542.34
02.07.2012 to 01.07.2013 (full year) £1,012.55 - 50% = £506.28

Totalling £2,385.01 the Respondents share being £1,192.52

To determine costs including interest on late payment at 4% over Barclays Bank minimum lending rate

60. The Applicant relies on Clause 7 (above) of the Lease to recover interest.

61. The total amount due following the issue of Demands being £188.92 to the date of the Application to this Tribunal.

To determine additional costs through FtT process including application and hearing fees and property management

62. The Applicant seeks recovery of the application fee (£250.00) to this Tribunal and the sum of £250.00 in respect of Mr Sullivan's attendance.

63. The Tribunal notes that the figures on page A103 differ from the figures in the table above which was taken from the application. For the reasons given in its deliberations below the Tribunal did not seek further representations on this point.

64. £750.00 plus VAT management fee per annum

To determine proposed building redecoration works

65. The Applicant relies on Clause 1 and the Tenants covenants Clause 3 paragraph (xvi) (above) as authority to undertake the work and seek a contribution of 50% in advance from the tenant.

66. The Applicant proposes to redecorate the exterior of the building having served the appropriate Section 20 Notices.

67. The Notice of Intention was sent to the Respondents in a letter dated 19th August 2013. The Notice of Estimates in a letter dated 21st February 2014 detailing the quotes received and seeking the Respondents comments. A further letter was sent on 25th April 2014. On 6th June 2014 the Applicant wrote to the Respondents requesting payment (in advance) of half of the cost of the work £2,420.00. No payment has been received.

To establish a joint fund for future maintenance works

68. The Applicant wishes to set up a joint sinking fund to even out the cost of future maintenance works.

69. To assist in this proposal the Applicant has prepared a schedule of budget expenditure analysing expenditure in the years 2011 to 2014 and projected expenditure through to the year 2020.

70. Tribunal's Note: For the reasons given in its deliberations below the budget is not reproduced.

To determine emergency access requirements

71. The Applicant seeks determination from the Tribunal as to the proper procedure for emergency access as in the past access has been refused.

72. In support of this the Applicant relies on Clause 3 paragraphs (iv) and (v) above.

The Respondent's Reply

73. The Respondents position is, without legal argument, that some but not all of these costs may be recoverable under the terms of the lease.

74. The Respondent says that they are only liable for 50% of the costs of repairs to that part of the building which is on more than one storey (as interpreted by Mr Batho's arbitration).

To determine maintenance costs

75. Roofwise Invoice dated 3rd December 2013 in sum of £1265.00 (£637.50)

76. The Respondents say that this invoice includes for work undertaken to Flat 1 and further the following work was not actually completed:
    a) No work to gutter on main roof
    b) No work done to various slates
    c) No scaffold tower was erected

77. The work undertaken actually took 20 minutes and comprised painting a lead valley gutter and applying sealant to one broken slate on rear elevation.

78. At the inspection the builder Mr M Brooks of Roofwise admitted that scaffolding had not been used to carry out the repairs as identified on his invoice dated 3rd December 2013.

79. The Respondents say that the invoice dated 21st August 2014 for £410.00 (£205.00) includes for repairs to the inside of Flat 1 (bedroom ceiling) for which the Respondents are not liable under the Lease.

To determine payment for future maintenance costs

80. The Respondents position is that maintenance needs to be discussed and agreed before works start.

81. At the Hearing the Respondents said that the Section 20 procedure needs to be followed correctly so that future maintenance costs are discussed and agreed before works starts. The work needs to be carried out by reputable workman.

To determine excess costs incurred due to water ingress (Insurance excess)

82. The Respondents say they were never informed of these costs, have never seen a policy of insurance nor any survey suggesting they were responsible. Attempts to speak to the insurers have been unsuccessful because their interest (in the building) was not noted on the policy.

83. The Respondents dispute that the water leaked from Flat 1a and in support of this produced a report from Mr S Leech and a letter from Mr M Grose both employees of Cornwall Council.

To determine previous insurance premiums

84. In addition to the Tenant's covenant to pay rent the Tenant covenants to pay one half of the insurance premium in advance as detailed in the Clause 1 to the Lease.

85. The Respondents say:

June 2010: Share of premium (£583.44) paid

June 2011: The Respondents requested sight of the policy and received a copy of the policy which became void on 12th June 2011 when the Applicant moved out of Flat 1. When this was queried with the Applicant the Respondents were told to get their own insurance.

June 2012. The Respondents became worried being unable either to contact the Applicant or get insurance as leaseholders.

June 2013: The Respondents paid £533.01 to Homeseekers having requested but not received a copy of the policy.

July 2014: The Respondents paid half of £588.39 (£294.19) but despite requests have not seen the policy.

July 2014: The Respondents are not confident that there is any insurance in place after the Applicant said at the Case Management Conference: ' I can't make any more claims on this policy'.

86. Further the Flat 1 is now let to sharing students and the Respondent is concerned that this is not properly recorded on the policy.

87. Having seen from the Applicants bundle that premiums were paid for 2011 and 2012 the Respondents gave on 13th February 2015 a cheque to Homeseekers for £500.00.

88. The policy statement does not reflect the reality of two privately owned properties and the Respondents remain concerned as to whether this policy was ever valid and in any event in accordance with Clause 4(iv) they do not believe that the interest of their mortgage company is or was ever properly noted.

To determine costs including interest on late payment at 4% over Barclays Bank minimum lending rate

89. The Respondents consider they are not liable for any interest because:
    2010 insurance premium paid
    Adrian Flux policies have not been seen
    Not made aware of policy excess claims
    Maintenance work to the value claimed has not been undertaken
    Not notified of ceiling repairs in advance of claim and the repair was not Respondents responsibility as it was carried out in the Applicants flat.

90. The Parties would not be in this position had the Applicant agreed to arbitration requested on 13th October 2013 in accordance with Clause 5 paragraph (b) of the Lease.

To determine additional costs through FtT process including application and hearing fees and property management

91. The Respondent believes there would have been no dispute had the Applicant acted in accordance with the Landlord's obligations under the terms of the Lease and followed the Section 20 consultation procedure.

92. For a small property such as this there should be no need for a property manager.

To determine proposed Building redecoration costs

93. The Respondents acknowledge that they are liable to pay half the cost of external decoration to shared parts of the building. In support of this they refer to the arbitration between Coulson and Johns (Robert Batho FRICS dated 23rd June 2000) particularly page 23 paragraph 88 which defines more precisely the areas of the house (building) for which the Respondents are liable. The Respondent says that Flat 1a (the upper floors) should only pay 50% of the costs relating to that part of the building which is on more than one floor.

94. Three quotes for the work are required and should be obtained from reputable builders in the local area with examples of their work to view and proper consultation should take place in accordance with the Section 20 procedure.

95. The quotes obtained were not based on a proper specification of work but simply on a standard painting specification which did not include for the repair work necessary prior to painting. Each contractor needs to receive the same specification.

To establish a joint fund for future maintenance works

96. There is no need for a joint fund as the Respondents will not pay for any work in advance and there is no provision in the Lease for a joint fund.

To determine emergency access requirements

97. The Lease is clear, the Respondents will grant access in accordance with the framework set out in paragraph 3 clause (v).

The Tribunal's Deliberations

98. The Tribunal considered all the relevant written evidence and oral presented summarised above in its deliberations. The members thank the Parties for the provision of the bundles assisting the Tribunal in the determination of the issues.

99. The Tribunal noted the arbitration award made on 23rd June 2000 by Mr Robert Batho FRICS but draws to the parties attention that this Tribunal is not bound by the determinations made in the arbitration.

The Lease

100. The Lease is the contract between the parties which sets out the rights and duties of the parties and it is the interpretation of the Lease which defines those rights and duties.

101. The Lease is a complex document which contains provisions which would appear to be conflicting and the drafting is less than entirely clear as to the original intentions of the parties as to who should be responsible for what and in what proportion.

102. In the absence of complete clarity (as in this case) as to the terms of the lease the common law has developed a set of tests to be applied to the interpretation of such documents and these are summarised below:

103. In *Investors Compensation Scheme Ltd v West Bromwich Building Society* referred to above, Lord Hoffman stated:

> "The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words.
> The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have understood it to mean"

104. Again in *Investors* above, Lord Hoffman states:

> "The rule that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand if one could nevertheless conclude from the background that something must have gone wrong with the language the law does not require judges to attribute to the parties an intention which they plainly could not have had"

105. In *Antaios Compania Naviera SA v Salen Rederierna* AB (1985) AC 191 it was stated that commercial contracts must be construed in a business fashion and there must be ascribed to the words a meaning that would make good common sense. Indeed in Antaios above, Lord Diplock stated that:

> "if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense"

106. The Tribunal find that there is no specific service charge provision in the Lease and whilst this does not alter its view that services charges may be payable for some services it does mean that there is no provision for annual service charge accounting nor indeed for a specific service charge year. The effect of this is that service charges (subject to being properly demanded) are due as and when expenditure is incurred.

107. The Tribunal find as a matter of fact that there is no provision in the Lease for the collection of any contribution to building maintenance work in advance.

108. The Tribunal, bearing in mind the poor Lease drafting, apparently conflicting provisions, taking into account the evidence before it and applying common sense and a practical approach as directed by the case authorities that the Lease should be construed and interpreted on the basis that each party contributes 50% of joint costs incurred (In this matter the Tribunal's interpretation differs from that of Mr Batho). The Tribunal is further supported in this interpretation by the clear intention in the Lease that costs should simply be shared on a 50-50 basis and by the Members observations on site namely that (although not specifically measured) the area of the ground floor which is single storey is offset by the area of the attic to Flat 1a leading to the logical conclusion that both flats are in fact of not dissimilar floor area or in any event sufficiently close for there to be no material difference.

To determine maintenance costs

109. The Tribunal finds that, under the terms of the Lease, the Parties agree to maintain their own parts of the building. The provisions for this are to be found in the Tenant's covenant at paragraph 3 Clause (iii) and in the Landlord's covenants Paragraph 4 Clause (viii).

110. The Tribunal finds that the Applicant (Landlord) covenants in Paragraph 4 Clause (ix) to contribute one equal half share of the cost of works carried out by the Tenant (Respondent) (under the Tenant's obligation paragraph 3 Clause (iii)) in so far as the works relate to the specified external items in relation to works carried out to the building and the flat (and in this finding the Tribunal differs from Mr Batho's findings).

111. Paragraph 2 Clause (i) refers the parties to the Schedule to the Lease where under First Part Clause (9) the Tenant must contribute to works carried out by the Landlord however the Landlord does not covenant to maintain Flat 1a (upper parts of the building).

112. The Tribunal find that paragraph 4 Clause (ix) should be read together with the Schedule First Part Paragraph (9). The effect of reading these two clauses together is that if works as specified to the exterior are undertaken the costs on both the building and the flat shall be shared on a 50-50 basis.

113. The Tribunal find that in respect of maintenance cost that it is a service charge. Section 18(1)(a) of the Act - '*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*'.

114. In respect of the works carried out under the Roofwise invoice dated 3rd December 2013 in the sum of £1265.00 the Tribunal finds on the evidence of its inspection and the tenants representations, that some limited maintenance work had been carried out by the Applicant, that scaffold (as admitted at the inspection) had not been erected and that such maintenance work could at best be described as 'make do and mend'. The invoice is not broken down as to the cost of materials and labour. The Tribunal finds that the cost of this work is unreasonable for the standard of work apparently undertaken. The Tribunal is not able to accurately assess the true cost of the work undertaken however as a matter of judgement using their knowledge and experience consider that the sum of £650.00 more fairly reflects the work actually carried out.

115. As to the invoice, also from Roofwise, dated 21st August 2014 in the sum of £410.00 the Tribunal concludes and determines that whilst work appears to have been carried out it appears to relate in its entirety to works to the interior of the Applicant's Flat and for which there is no provision under the terms of the Lease for recovery from the Respondents.

116. The Tribunal determines that the Respondents contribution in respect of the invoice dated 3rd December 2013 should be limited to £325.00.

To determine payment for future maintenance costs

117. The Tribunal finds that the Lease makes no provision for the Landlord to undertake work to the Tenant's Flat 1a and seek a contribution from the Tenant.

118. The Tribunal notes the Respondents' statement to the effect that there will be no problem funding future maintenance so long as the Applicant correctly follows the procedure in the Lease and Section 20 of the Act. The Tribunal concurs with the Respondents' view that proposed works needs to be discussed where appropriate.

119. The Tribunal's jurisdiction is to identify if the works undertaken or to be undertaken are *'reasonably incurred'* and if so are carried out to a *'reasonable standard'* in accordance with Section 19 of the Act.

120. There is no provision in the lease for the collection of monies in advance from the Respondents prior to works being completed.

To determine excess costs incurred due to water ingress

121. This issue relates to the insurance excess in respect of the 2 claims in the sum of £350.00 (£175.00 half share) and £100.00 (£50.00 half share).

122. The Tribunal finds that the works for which the insurers did not make payment (the insurance excess) related to consequential damage to the interior of the Applicant's Flat 1 for which the Tenant has no liability. Accordingly the Tribunal determines that the Respondents have no liability to contribute under the terms of the Lease.

To determine previous insurance premiums

123. The principles for determining the reasonableness of insurance premiums are set out in a series of determinations:

Berrycroft Management Co Ltd and Other v Sinclair Gardens Investments (Kensington) Ltd [1997] 22EG 141: Insurance has been arranged in the normal course of business with an insurance company of repute

Forcelux v Sweetman [2001] EGLR: Insurance has been reasonably incurred in accordance with terms of lease – the market has been regularly tested – and the costs themselves are not excessive

Havenbridge Ltd v Boston Dyers Ltd [1994] 49 EG11: The premium charged does not have to be the cheapest available

124. The Respondents accept that they are liable for 50% of the premium (payable as rent) for the entire building including Flat 1a in accordance with the Clause 1 of the Lease.

125. The Tribunal is satisfied that this provision is one that is subject to Sections 18 to 30 of the Act and therefore a matter to be determined by this Tribunal.

126. The Tribunal found as a matter of fact that there was a lack of clarity in the way the Applicants had raised invoices for the Respondents' contribution to insurance premiums. It became apparent at the Hearing that initially the premium became due in the early part of any one year but the Respondents were not invoiced until some six months later. There was no indication on the demand issued to the Respondents to clearly show the period of insurance covered.

127. The Respondents said they had made payments of £827.20 but these had not been taken into account by the Applicant. The Tribunal concluded, on a balance of probabilities basis, that these payments had been made in good faith but due to the Applicant's poor accounting procedures had not been properly recorded.

128. Further two cheques for £250.00 each had been handed over between the first and second day of the Hearing. Those cheques had not been banked at the time of the Hearing and accordingly were not taken into account by the Tribunal.

129. The alleged failure by the Applicant to ensure the Tenant's mortgagees are noted on the policy is not a matter the Tribunal can determine as it does not appear to result in the insurance being null and void but merely that the Respondents or their mortgagees are unable to engage in correspondence other than via the Applicant. The Tribunal finds that whilst this is very unsatisfactory it does not lead to the conclusion that the premium has not been reasonably incurred nor that the amount of the premium is unreasonable. The Tribunal further notes the Respondents did not challenge the premiums.

130. The Tribunal concluded that the proper amount due for insurance for the period in dispute was £1,192.51 as detailed on Mr Sullivan's Schedule of 17th April 2015 and that the Respondents had made payments of £827.20 and accordingly the amount outstanding for the period up to 01.07.2013 (the period of the dispute) is £365.31 and is payable.

131. The Tribunal draws the Parties attention to the fact that all invoices (whether for insurance or any other sum due from the Tenant to the Landlord) should not only be clear but should also comply with sections 47 and 48 of the Landlord and Tenant Act 1987 and Section 21B of the Act. Policy documents should be made available on request.

To determine costs including interest on late payment at 4% over Barclays Bank minimum lending rate

132. The Tribunal found as a matter of fact that such invoices as had been raised for payment by the Respondents lacked clarity and in any event such invoices were not payable until such time as invoices were compliant with sections 47 and 48 of the Landlord and Tenant Act 1987 and Section 21B of the Act.

133. The Tribunal accordingly determines, that whilst there is a provision for the recovery of interest on late payment in the Lease, that no interest is due to the Landlord.

To determine additional costs through FtT process including application and hearing fees and property management

134. The Tribunal find there is only limited provision (paragraph 3 Clause (vii)) for the recovery of costs and fees incurred in proceedings and in the management of the building. Those costs only relate to a situation where proceedings for recovery of possession (section 146 of the Law of Property Act 1925) have been commenced.

135. The Tribunal was not made aware of any such proceedings and accordingly such costs as may have been incurred are not recoverable.

136. There is no provision in the Lease for the recovery of any management fee.

137. As to the Applicants request for reimbursement of the fee payable to the Tribunal for the application and Hearing the Tribunal makes no award in view of the Applicants failure to succeed on a number of points in the Application.

138. The Tribunal interpreted the Respondents submissions in respect the costs incurred in these proceedings to be an application under Section 20C of the Act for an order preventing the Applicant from recovering the costs of these proceedings by way of the service charge. The Tribunal finds there is no provision for such recovery under the Lease. However, given the evidence of the Applicant's failure to communicate effectively with, failure to account properly to the Respondents and for the avoidance of any doubt between the Parties the Tribunal determined that such an order should be made.

To determine Proposed Building redecoration costs

139. The Lease appears to place an obligation on the Tenant Clause 3 Paragraph (xii) *'in every fifth year of the term.....to paint all the outside parts usually painted.....'*

140. This clause make no reference to the building or the flat specifically and the Tribunal finds that the intention of the parties must have been that the Tenant would undertake the work to all the painted elevations and the Landlord would contribute one equal half share of the cost. (Paragraph 4 clause (ix).

141. The Tribunal finds that this is not therefore a service charge as defined by section 18 of the Act (above) and accordingly makes no determination.

To establish a joint fund for future maintenance works

142. There is no provision in the Lease for the collection of monies in advance from the Respondents for the purpose of creating a sinking fund.

143. The Tribunal has no jurisdiction under section 27A to make orders varying the terms of the lease and therefore makes no determination on this point.

To determine emergency access requirements

144. The Tribunal has no jurisdiction under section 27A to make orders varying the terms of the lease and therefore makes no determination on this point.

Robert T Brown
Chairman

Appeal Provisions

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.