10953

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LSC/2015/0084**
Property	:	**94a Sunningfields Road, London NW4 4RH**
Applicant	:	**Gladewater Holdings Limited (Landlord)**
Representative	:	**Mr Y. Solley of Counsel**
Respondent	:	**Mr T. and Mrs A. Kociak (Leaseholders)**
Representative	:	**In person**
Type of Application	:	**Section 27A and 20C Landlord & Tenant Act1985, Service Charges (Court Referral)**
Tribunal Members	:	**Judge Lancelot Robson** **Mr I. Thompson BSc FRICS** **Mrs J. Dalal**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **17th and 18th June 2015**
Date of Decision	:	**22nd July 2015**

DECISION

Decision Summary

(1) In the referred County Court case, the Tribunal determined that no sums are currently payable by the Respondent under the terms of the lease dated 21st November 1979 (the Lease).

(2) The Tribunal went on to determine that certain sums (detailed below) would be payable by the Respondents if the Applicant complied with the terms of Sections 47 and 48 of the Landlord and Tenant Act 1987, and other statutory requirements.

(3) The Respondents' counterclaim for set off was decided in their favour in the sum of £2,400.

(4) The application by the Respondents under Section 20c of the Landlord and Tenant Act 1985 was granted, so that the Applicant's costs of this application chargeable to the service charge are limited to NIL.

(5) The application by the Applicant under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for reimbursement of its fees paid to the Tribunal in connection with this application was refused.

(6) The Tribunal also made the other decisions noted below.

(7) This case is now referred back to the County Court at Barnet to deal with ground rent, court costs and any other outstanding matters.

Preliminary

1. By an order made on 9th February 2015 in the County Court at Barnet in Claim No. A52YJ958 District Judge Wagner referred the Applicant's claim for service charges to this Tribunal. The Applicant seeks an order as to the reasonableness of service charges totalling £24,540.84 under Section 27A of the Landlord & Tenant Act 1985 relating to all the service charge years commencing on 1st January 2002 and ending on 31st December 2013, and estimated service charges for the year commencing 1st January 2014, pursuant to a lease dated 21st November 1972 (the Lease).

2. Directions were given by the Tribunal on 10th March 2015 after a Case Management Conference attended by the Respondents and the Applicant's representative. The Directions noted some slightly unusual features of this application; the schedule allegedly attached to the Applicants' particulars of claim in the County Court case was not attached, and had never been produced; the landlord's solicitors had produced a draft Scott Schedule with certain invoices attached, but it was difficult to relate sums in the invoices with the sums claimed in the Scott Schedule; the Respondents are Polish and are not fluent in the English language, but fortunately their solicitors acting at that time had had their

detailed Defence in the County Court claim drafted by Mr Howard Lederman of Counsel. For these reasons, the Judge conducting the Case Management Conference had not ordered the Respondents to make any further statement of case, and had dispensed with witness statements, stating that the Respondents would appear in person and the a member of the managing agent's staff would attend to prove the invoices.

3. At the hearing, the Respondents attended, and the Applicant was represented by Mr Yusuf Solley, who had only recently been instructed, but no member or employee of the managing agent or the landlord appeared. This left Mr Solley in great difficulty because there was no adequate statement of the Applicant's case and there were many ambiguities and lacunae in his client's documents. Mr Solley was unable to call on anyone from his client's side who could vouch for or explain the various documents the Applicant relied upon.

Inspection

4. The Tribunal inspected the exterior and internal common parts of the building, as well as the interior of Flat 94A in the company of the Respondents on the morning of the first day of the hearing. No representative of the Applicant attended. The building is a two storey and attic semi-detached house built about 1900, which was subsequently converted into 4 flats. The building has rendered brick walls under a pitched slate roof. Number 94A is a ground floor flat. At the front of the building there was informal parking for 3 cars, and a side entrance to the communal rear garden. Externally the Tribunal noted that a manhole cover at the front of the building was broken and dangerous. The rear garden was very overgrown, and that the ground floor tenant opposite 94A had secured the side entrance to prevent others entering the garden. Both tenants had fenced off the patio areas behind their flats. There was clear evidence of historic structural movement above and at the front of the left hand bay window (looked at from the road). The windows of the ground floor flats had the original single glazed frames. The flats above the ground floor had UPVC window frames. The external render appeared to have been painted quite recently, but the coating looked rather thin. Entrance to the internal common parts was gained from the main front door controlled by an entryphone system. The lighting in the common parts was permanently on during the Tribunal's visit. The carpet and internal decoration looked tired. The Tribunal noted that the upstairs common parts had numerous items left there, constituting a hazard. There was no means of controlling post for residents, and thus it littered the floor. There were signs of water ingress from a skylight in the common parts. Inside No 94A there were signs of water damage from above in the bedroom and living room. The leak above the living room apparently came from the flat roof above it. At the hearing Mr Kociak stated that he had painted his part of the exterior, the ground floor of the common parts, changed lightbulbs, and maintained the door lock and entryphone on several occasions. He stated that Mrs Kociak had cleaned the common parts on many occasions.

Hearing

15. Mr Solley confirmed at the start of the hearing that having checked the figures provided by his client in the Scott Schedule, he had concluded that the amount his client was claiming was in fact £23,338.34. This figure was made up of three parts. The first part related to sums claimed from 1st January 2002 – 21st March 2007, which were arrears owed by the previous lessee. The second part related to final service charges owed by the Respondents from 21st March 2007 to 31st December 2012. The final part related to estimated service charges for the period 1st January – 31st December 2013. (The Tribunal, for reasons noted below, has treated the last two elements to different dates.) In answer to questions, Mr Solley, by reference to the Land Registry entries, confirmed that his client had become the landlord on 1st October 2007, (but was registered on 2nd December 2008) and was a company incorporated in Libya. The current managing agent, Windsor Properties, he believed, had been appointed by the Applicant when it had become the landlord. The previous managing agents, Dukes Estates, acted for a Mr Paul Thompson, the previous freeholder. However the Tribunal notes that the invoices and demands from Windsor Properties in the bundle commenced from 1st January 2007. Towards the end of the hearing it was also established from Mr Kociak that the current leaseholder of Flat 94B, Mr Williams, was the previous owner of Flat 94A, and that the only person Mr Kociak had ever known to contact to deal with the management of the property, and whom he considered to be the landlord, was a Mr Bukhari. The Tribunal noted that the original landlord of the Lease in 1979 was a Mr Bukhari, who had granted the Lease to another Mr Bukhari.

16. Mr Solley made his submissions following the challenges made by Counsel on behalf of the Respondents. Certain other issues were also clear from the documents bundle, which had not been seen by the Counsel for the Respondents. The Tribunal decided to set out the parties' submissions on each item, and its decision on that item immediately follows.

Arrears brought forward from the period prior to 1st January 2002 (£6,786.34)

17. The Applicant submitted that the current lessee remained liable for the arrears of a previous lessee. Para.2 of the Fourth Schedule to the Lease gave the landlord power to charge any service charges (inter alia) prior to the Lessee taking the Lease. The figure was stated in the 2002 demand on p.92 of the bundle. In reply to questions he agreed that there was no other evidence supporting this figure.

18. The Respondents' Defence (which related to all sums prior to 21st March 2007) was that no details of the sums now claimed were provided to them when they took an assignment of the Lease.

19. The Tribunal noted that as a matter of common law an assignee can in certain circumstances be liable for arrears of a predecessor in title, following the doctrine of privity of estate, relating to covenants touching and concerning the land. The Landlord and Tenant (Covenants) Act 1995 did not alter the position for leases granted before the Act came into force. However, the Respondents' written submissions and oral evidence were that prior to the Applicant's solicitors' letter dated 21st October 2013 no details had been provided to them of the sums concerned. Mr Solley considered that documents in the bundle indicated otherwise. However he agreed that there was no evidence other than the May 2003 demand of this sum to support it. The Tribunal considered that it was for the person alleging the debt to prove that it was due. The Tribunal decided that there was insufficient evidence of the sum alleged to be due. The whole sum of £6,786.34 was therefore unreasonable, and not payable.

Sums demanded for period between 1st January 2002 and 21st March 2007
Also Sums demanded for period between 21st March 2007 and 20th March 2012

20. The Applicant submitted that the Respondents were liable for these sums during a period prior to the assignment to them, again relying on the doctrine of privity of contract. The Respondents knew of the liability when they purchased. Mr Solley agreed in answer to questions that apart from the service charge demand in the bundle, there was no evidence of the sums demanded. However he considered that it was usual for a purchaser to enquire about such matters. There was no evidence in the bundle that the Respondents had queried the alleged debt. He relied upon the demands and statements in the bundle. He considered that a challenge under Section 47 or 48 would delay rather than invalidate a charge. The demands in the bundle were as they were. Nothing he could say could alter that. The demand dated 8th August 2013 had set out the amounts owed in detail, but he accepted that there was no evidence of service of accounts on the file prior to the Applicant's solicitors' letter dated 21st October 2013 (apart from a copy letter from Dukes Estates to the Kociak's solicitors dated 19.10.2007, which did not contain the copy documents mentioned there).

21. The Respondent submitted that no sums now claimed were notified to them when they took assignment of the Lease. They were willing to pay a reasonable sum for services properly provided to a reasonable standard when duly certified and requested in accordance with the terms of the Lease. The first specific intimation of the costs now demanded was in a demand note dated 8th August 2013. In oral evidence, Mr Kociak stated that he had been informed by Mr Bukhari at some point in 2009 that service charges were owed, but without details. He had approached Mr Williams, the previous lessee and still a lessee of another flat in the block at that time, and Mr Williams had told him no money was owed. He had never heard of Dukes Estates, Windsor Properties or Gladewater Holding Limited until the court claim had been started. In written

submissions, Counsel for the Respondent submitted that the demands made by the Applicant were defective on the following grounds;
* None of the service charge demands complied with Sections 47 and 48 of the Landlord and Tenant Act 1987 (the 1987 Act) (notices of the landlord's address and address in the UK)
* Some of the charges did not comply with Section 20B of the a985 Act (intended charges to be notified within 18 months of being incurred)
* Charges for major works had been made without compliance with the provisions of Sections 20, 20ZA, or the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 (the 2003 Regulations).

22. The Tribunal considered the evidence and submissions. The Tribunal's decision above set out its views on the privity of contract point. The Tribunal considered that the Landlord's submissions and evidence on the date of service of demands on the Respondents amounted merely to assertions. There was no evidence of any demands on the Respondents prior to October 2013 in the bundle. Mr Solley suggested that a demand sent to the adjoining lessee's address in 2007 was some evidence of service on the Respondents, but the Tribunal preferred the evidence and submissions of the Respondents. Mr Kociak appeared to be a credible witness. Mr Solley had suggested that the demands were evidence, but with no supporting evidence or satisfactory detail the Tribunal decided that their evidential value was low. The Tribunal could find no demand or notice which complied with Sections 47, 48 of the 1987 Act, Section 20, or section 20ZA of the 1985 Act, or the 2003 Regulations in the bundle. There was a purported Section 20 notice in the bundle dated 19th August 2013, but it was an out of date form, and only complied with the consultation regulations prior to October 2003. Further no copies of the estimates were attached, and there was no evidence of service on the Respondents. **The Tribunal therefore decided that no sum claimed in the Court proceedings had yet fallen due for payment.** Further any sums which had been incurred prior to the 20th March 2012 apparently fell foul of Section 20B of the 1985 Act, and were irrecoverable. The Tribunal also found it curious that the Applicant had chosen to sue the Respondents, rather than the previous tenant, against whom the Applicant should have had a much stronger case.

23. The Tribunal therefore decided that no sums demanded for the period prior to 21st March 2007 were payable, as were none demanded prior to 21st October 2013.

24. The Tribunal refers to its findings in the last part of paragraph 22. Relating to sums demanded for the period 21st March 2007 - 19th March 2012

Sums demanded relating to the period 20th March 2012 to the date of commencement of proceedings (29th December 2014).

25. By way of information, the Tribunal noted that the Respondents challenged the following items also on the question of reasonableness;

* Insurance contributions
* Electricity accounts
* General repairs
* Accounting certificates required by the Lease
* Management fees
* Accounting fees

26. The Applicant made submissions following the above issues in a Scott Schedule. Invoices were attached relating to general repairs, management and accounting, dating back to 1st January 2001. Invoices were alleged to be attached relating to the insurance charged for the same period, but in fact none were present. The only insurance evidence related to a policy for the period 12th April 2014 – 11th April 2015 (outside the period in dispute), and contained no evidence whatsoever as to the premium. The Tribunal noted in passing that it did not cover all the risks required to be covered by the Lease. The Applicant submitted that it had misplaced or lost the bills file for the electricity.

27. The Respondents' Counsel had not had copies of the invoices when preparing the Defence. The Tribunal therefore questioned Mr Kociak about his recollections of work done. As noted above, he stated that he had only dealt with Mr Bukhari, and had no knowledge of Dukes Estates, or Windsor Properties. For Mr Bukhari, he only had a mobile telephone number. He knew Mr Bukhari had retained two of the flats, the upper flats. Since he had become a lessee he had called Mr Bukhari on the telephone four times to report defects and once to try and discover information about the arrears he had been told about in 2007. All these conversations had been unsatisfactory. In answer to questions from Mr Solley he stated that one conversation had lasted 15 minutes. Mr Bukhari had spoken for most of that time, and Mr Kociak found his manner disrespectful and dismissive. He made promises to do work, which were not kept. He found contact with the landlord unproductive, and had taken to doing work himself when he could. Mr and Mrs Kociak had had to do work which was the responsibility of the landlord, including plumbing building and decorating repairs, changed lightbulbs, and maintained the door lock and entryphone on several occasions. He had unblocked the drains on 10 occasions. He stated that Mrs Kociak had cleaned the common parts, all over many years. When questioned by the Tribunal about the building work claimed, Mr Kociak could only answer relating to the period from 21st march 2007. He recalled some works done to the front door, in 2009, the exterior and roof in 2010 and 2011, but not 2012. The work done in 2010 to fix the leak from the roof had not been successful. It still leaked. He did recall the major works in 2013, which had dealt with some defects, but not others. He understood from the contractors that they were very restricted by their instructions.

28. The Tribunal considered the evidence and submissions. There was no evidence relating to the insurance or the electricity. There was no evidence at all of the insurance premiums. The common parts electricity

was on during inspection, but there was also evidence at the hearing that the electricity was not connected to meters relating to the common parts. In the absence of any of these invoices, the Tribunal decided that the all of these charges were unverified and therefore unreasonable.

29. Relating to the invoices for management, accounting and repairs, copies of "invoices" had been produced for the period from 2001 to 2013. However they all suffered from defects. They were not in fact invoices at all. Despite the fact that many had been issued by the managers and the accountants, as a group they were all unprofessional, crude, misspelt and failed to contain necessary legal information, such as their VAT status, whether they were incorporated, or (with the exception of the tradesmens' invoices) who the principals or Directors were. The managers, (who seemed to be emanations of the landlord) had produced no management agreement. If any member of the managers had attended they would have been closely questioned by the Tribunal as to why they accepted or produced defective invoices. This also raised doubts about the accounting certificates produced. If the accountants were unable to produce legal invoices themselves, it did not reflect well on their certificates. Further, there seemed to be no evidence of management justifying any of the costs charged. The Tribunal rejected all the invoices, except those of the tradesmen, as, with one exception, the Respondents could recall evidence of work, and the amounts seemed reasonable. However the major works invoice for 2013 was subject to a maximum of £250 due to non-compliance with the requirements of Section 20 of the Landlord and Tenant Act 1985.

30. The Tribunal thus accepted that if compliant demands were served the following invoices were payable

1st January 2002 – 21st March 2007 -	None
22nd March 2007 – 20th March 2012 –	None
21st March 2012 – 31st December 13	
J. McCaul; £650 13th July 2012	
(25%, payable by Respondents)	£162.50
Quaid £7,420 10th December 2013	
(S20 Notice defective - £250 only payable by Respondents)	250
TOTAL	**412.50**

Set off

31. The Applicant submitted that the Landlord's obligations to do work only bit when the service charge had been paid, following clause 5 of the Lease. Repeated failure to pay the landlord did not entitle the Respondents to rely upon the landlord's potential failings. They had paid no service charge or ground rent. The Applicant was properly applying for a determination of liability. Mr Solley referred to Bluestorm Ltd v Portvale Holdings [2004] EWCA Civ 289. The landlord was unaware of the defects, particularly the drains. The managing agent might not have been obliged to inspect the property and report such matters.

32. The Respondents submitted that they had carried out works which were the liability of the Applicant. The problems had been going on for 8 years. Asked if they had asked the landlord to do these works, Mr Kociak stated that he had phoned the landlord on 4 occasions asking him to carry out various works. He believed the landlord was made aware of the defects. Also he retained two of the properties in the building. The landlord's consistently stated position was that the works were "in hand", but nothing was ever done, or done badly. He had concluded that approaching the landlord was no use. As noted above, Mr Kociak referred to the landlord's discourteous attitude towards him. If anything needed to be done, he would try to do it himself. He had carried out the following works; unblocking the drains on at least 10 occasions (caused by the Applicant's tenants), repainting part of the property externally jointly with the owner of Flat B prior to January 2014, when the landlord repainted; fixing water leaks from the central heating in the flat above (the landlord's flat). He had repaired the entryphone and common parts on several occasions. He had replaced the patio door and windows as they were old and broken. He and Mrs Kociak had cleaned the internal common parts when they became untidy. He stated that for about 2 years the landlord had had 20 people living in the upper flats, who were Somalian refugees. He agreed that he had not specifically asked the landlord to repaint externally or repair the patio door and windows. He had not known that the patio doors and windows were the landlord's responsibility, but those works cost him £1,750. He considered that the delay in doing external repairs had increased the cost of doing so. The water leaks came from the flat above, and also the roof. The leaks from the flat above had damaged his decorations. On one occasion in 2010 he returned home to discover that the roof leak had soaked his sofa, the television and the floorings. It had also affected windows. It had not been pleasant to be in the flat on such occasions.

33. The Tribunal considered the evidence and submissions. The Applicant was effectively arguing that payment of the rent and service charge was a condition precedent to the landlord complying with its obligations. It is now trite law, following Yorkbrook Investments v Batten 1985 2 EGLR 100 (CA), that this submission is erroneous. The Bluestorm case (supra) did not assist either. There the landlord and owners of a majority of the leasehold interests were clearly and purposefully acting oppressively towards the Manager by suing for urgent repairs to be carried out, while withholding all service charges demanded. In this case, the Applicant can only point to invalid demands in 2013. There is no question of oppression by the Respondents. The Applicant (wisely) did not contest that the Tribunal had power to consider set off, but the Tribunal notes that its jurisdiction should only be exercised sparingly, particularly if the court is in a better position to consider and grant relief in the light of the circumstances of the case. The Tribunal also notes that its jurisdiction to grant set off is limited to the value of the service charge claimed by the landlord. The Tribunal noted that carrying out work could form the basis of a claim for special damages. It also considered that it should, if necessary, follow the leading case on general damages in property

matters, Wallace v Manchester [1998] EWCA Civ 1166. Having considered all these points, the Tribunal concluded that it would be appropriate in this case to exercise its jurisdiction on set off.

34. Although not raised by the Applicant, for completeness, the Tribunal decided that the landlord could not rely on the tenant's covenant in clause 2 of the Lease to pay the rents "without any deduction", those words being too ambiguous, as decided in Connaught Restaurants v Indoor Leisure Ltd (1994) 4 All ER 834 (CA). Disabling the right to set off needs clear words.

35. The Tribunal considered that attendance by a member of the Landlord or its agent would have greatly assisted its deliberations, but even Mr Solley stated that had had no direct contact with his client, and had been instructed very recently. The Applicant had chosen to present evidence, but not make a statement of case, apart from the Scott Schedule and the submissions made by Mr Solley, working from the papers. It had not sent a witness, despite the comments made in the Directions. It had put itself at a considerable disadvantage, despite having legal representation. On balance, the Tribunal decided that the Respondents had proved their claim to set off.

36. The Respondents had given no specific figures in support of their claim, apart from a general figure of £4,000, (i.e. £2,000 for damage to his property, and £2,000 for remedial works to the common parts), which Mr Kociak admitted was based on the cost of a good holiday to compensate his family for the problems, which is not a recognised measure of damages.

37. The Tribunal decided that the Respondents had made some attempt to bring the defects to the Applicant's attention. Where they had not done so, the reason was apparently due to the Applicant's unreasonable behaviour. The Respondents had clearly suffered special damage, notably, the TV, sofa, floorings and decorations. The claim for work to the patio door and windows (£1,750) could not be allowed as it was clear the Respondents were not reacting to the Applicant's breach of covenant. .The Tribunal considered that a reasonable figure for the repair and replacement of the eligible items would be £800. Also by way of special damages, materials and considerable time had been spent by the Respondents on remedial work including the drains and the defective manhole cover, and cleaning the common parts, but in the absence of detailed evidence, the Tribunal decided to take a broad brush approach. It decided to award a figure of £800 for that element. In respect of general damages, the Wallace case suggested an award could be made for the loss of comfort and convenience, over a period of 8 years, with particular discomfort during the 2010 incident. However this should be tempered by the uncertainty of the extent of the discomfort. The Tribunal decided to make a token award £100 per annum for 6 years, and for 2010 when the major leak from the roof occurred, an award of £200. These figures are summarised below:

Special Damages	
Repair and Replacement of Furniture	£800
Materials and Repair work to common parts	£800
General Damages	
Loss of comfort and inconvenience	
(2008, 2009, 2011, 2012, 2013, 2014)	£600
2010	£200
TOTAL	**£2,400**

Costs

44. The Applicant made an application for reimbursement of the hearing fee by the Respondent under Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. It also considered it was entitled to claim the costs of the hearing under Paragraph 13 of the Fourth Schedule to the Lease, relating to the costs of Section 146 notices. The Respondents made a Section 20c application at the hearing.

45. The Applicant submitted that the Respondents' conduct was unreasonable in defending the application. When pressed on the potential claim under Section 146 of the Law of Property Act 1925, Mr Solley submitted that forfeiture was always an implied consequence of an action for debt, and that the possibility of forfeiture had been mentioned in the letter before action dated 21st October 2013, although he agreed that no other reference to Section 146 had been made in the correspondence. The Applicant claimed £1,542 as stated in the particulars of claim. The Respondents' section 20C application was opposed. The letter before action was an invitation to manage the dispute. However the Respondents did not reply, so action was taken. He referred to Freeholders of 69 Marina, St Leonards-on-Sea v Oram and Anr [2011] EWCA Civ 1258 in support.

45. The Respondents resisted both claims, and pressed the Section 20C application.

46. The Tribunal considered the evidence and submissions. The application under Rule 13 seemed completely misconceived. This application was made by the Applicant, and in the event was very successfully defended by the Respondents. There was no evidence at all to suggest that their conduct of their case was unreasonable. The Tribunal decided that no sum claimed under Paragraph 13 would be reasonable in the circumstances of this case.

47. The Section 146 matter was arguably a proposed administration charge. Certainly there was nothing in the Lease to suggest it could be treated as a service charge item. There was no evidence of a Section 146 notice, and no application under Section 168 of the Commonhold and Leasehold Reform Act 2002 to this Tribunal, or any preliminary correspondence on this issue. There was a vague reference to forfeiting the Lease in the

letter before action dated 21st October 2013. Mr Solley suggested that the landlord was in fact making preparatory steps to issue a Section 146 notice, and was therefore entitled to make the charge. However the facts of the 69 Marina case (see above) are not on all fours with this case, or Mr Solley's submission. In that case the LVT had previously made a decision on the service charge amounts due and owing, but the lessees had failed to pay those amounts, thus further court proceedings were necessary to obtain payment. When the landlord claimed all the costs it had incurred, the Court of Appeal found that the costs incurred by the landlord before the LVT fell under the terms of the relevant clause for recovery of costs relating to Section 146 notices. The LVT had made no decision relating to costs under Section 20C in that case. The Court of Appeal made it clear that the lessee's obligations for payment of the landlord's costs via the service charge and via the clause relating to Section 146 were separate obligations. In this case the Tribunal has decided that no sum is in fact due to the Landlord at this point, and in any event the Tribunal decided that reasonable evidence of a specific intention to make a Section 146 claim is necessary, otherwise the use of provisions relating to the costs of Section 146 notices, such as the one in question, could be used to charge leaseholders the costs of unmeritorious applications under Section 27A. Here, the landlord has failed to prove that any sum is currently due, and has been successful only on a contingent basis, to the extent of £412.50. The original claim was in excess of £24,000. Furthermore there was no evidence at all as to how the sum of £1,542 claimed was incurred. The Tribunal decided that the proposed charge was unreasonable in principle, and in amount. The Tribunal deprecates attempts to use Section 146 costs clauses in such cases where the liability for specific sums has yet to be decided by the Tribunal. It suggests another example of trying to obtain by the back door what has been refused at the front.

48. The Lease in this case apparently made no provision for the landlord to recover its costs of this application from the service charge, but for the avoidance of doubt, the Tribunal granted the Respondents' application under Section 20c so that the landlord's costs of this application chargeable to the service charge shall be limited to NIL

Next Steps

49. Sums found due to the Respondents shall be paid within 21 days of the date of publication of this decision. The Applicant shall also give credit to the Respondents in its accounts for the amounts found unreasonable by this decision, and notify the Respondents of having done so also within 21 days. The sums found contingently due shall not be demanded until the Applicant has validly served the necessary notices and demands.

50. This case shall now be referred back to the County Court to deal with outstanding matters.

Chairman: Judge Lancelot Robson Dated: 22nd July 2015

Appendix 1

Landlord & Tenant Act 1985

Section 18

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

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19

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

(a) only to the extent that they are reasonably incurred, and

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

and the amount payable shall be limited accordingly.

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

Section 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 18 period of 18 months beginning with the date when the relevant costs in question had been 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 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

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

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the Tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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).

Landlord and Tenant Act 1985 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 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).....

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

13.-(1) The Tribunal may make an order in respect of costs only-

(a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
    (i) an agricultural land and drainage case,
    (ii) a residential property case, or
    (iii) a leasehold case; or
(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.