11704

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00MW/LSC/2016/0002
Property	:	8 Stainers Close, Ryde, Isle of Wight PO33 2SP
Applicant	:	Pollard (Hampshire) Limited
Representative	:	E & J Estates
Respondent	:	Mr Michael Murphy
Representative	:	
Type of Application	:	For the determination of the liability to pay a service charge Transferred Order
Tribunal Member(s)	:	Judge Tildesley OBE Mr D Lintott FRICS Mrs J Herrington
Date and Venue of Hearing	:	2 August 2016 The Law Courts 1 Quay Street Newport PO30 5YT
Date of Decision	:	9 August 2016

DECISION

Decisions of the Tribunal

1. The Tribunal determines the sum of £4,773 for the 2012/13 service charge. The sum of £1,193 is payable by Mr Murphy (the Respondent) in respect of the service charges for 2012/13, which is £100 less than the sum originally demanded on 29 April 2013.

2. The Tribunal determines the sum of £3,216 for the 2013/14 service charge. The sum of £804 is payable by Mr Murphy (the Respondent) in respect of the service charges for 2013/14, which is a £270 less than the sum originally demanded on 12 November 2013.

3. The Tribunal transfers the proceedings back to the County Court sitting at the Isle of Wight to determine the outstanding matters of costs, administration charges and interest.

The Application

4. These are proceedings which have been transferred from the Court in accordance with section 176A of the Commonhold and Leasehold Reform Act 2002 and involve Mr Murphy's liability to pay service charges in connection with the flat at 8 Stainers Close ("the property").

5. The question for the Tribunal to determine is the reasonableness of the service charges from 25 December 2012 to 24 December 2014[96].

6. The freehold of the property belongs to Pollard (Hampshire) Limited. E & J Estates is the freeholder's representative in these proceedings. Remus Management Limited was the managing agent for the property during the period of Mr Murphy's dispute.

7. Proceedings were originally issued in Northampton County Court under claim number B5CW85Z1. The claim was transferred to the Isle of Wight County Court and then in turn transferred to this Tribunal by order of District Judge Grand on 23 December 2015.

8. The claim was in the sum of £2,225.23 comprising court fee of £105 and solicitor's costs of £80, £1,225.26 in rent, administration charges and service charges and legal costs of £765[1]. There was also a claim for interest which stood at £49.97 as on 17 July 2015.

9. The statement dated 12 February 2016 [169] showed that Mr Murphy had arrears of £620.26 under the service charge account. This did not include the legal costs and other costs connected with the County Court proceedings. It would appear there were no arrears owing prior to the interim service charge demand for 25 December 2012 to 24 December 2013 issued on 29 April 2013 [169].

10. Mr Murphy's complaint was about the purported poor management of the property by Remus. As a result Mr Murphy had decided not to pay the full amount of service charge until his complaint had been dealt with.

11. Mr Murphy's principal concern was with the service charge for the year ending 24 December 2015. Unfortunately the Tribunal had no power to deal with the service charge for 2015 because the Court had not asked the Tribunal to decide the service charge for that year. The Tribunal advised Mr Murphy to speak to the freeholder's representative first to see if his dispute regarding 2015 could be resolved, and if not to bring an application to the Tribunal to determine the reasonableness of the charges for 2015. The Tribunal also advised Mr Murphy of the potential consequences of withholding payment of service charges.

12. The Tribunal has jurisdiction to determine all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable.

13. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

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

The Hearing

15. Mr Murphy appeared in person at the hearing. The Applicant was represented by Mr Stephen R Boon LL.B of E & J Estates, who was accompanied Mr Christopher Beamish MBA FRICS, Head of E & J Estates. Ms Katinka Beamish attended as an observer.

16. The Tribunal admitted in evidence an agreed bundle of documents prepared by the Applicant. References in this decision to documents in the bundle are in [ ].

17. At the hearing Mr Boon handed in further documents, namely invoices relating to various works done in the years in question [260-265, 295, 296]. Mr Murphy supplied a letter from Mr George C Barron the former leaseholder of flat 10 complaining about Remus' management of the property [266]. The parties did not object to the admission of these documents.

18. Prior to the hearing Mr Boon supplied the Tribunal at its request copies of a document prepared by Remus explaining its management fees [267], a condition survey of the property dated 21 January 2014 prepared by Ellis Sloane & Co Chartered Surveyors [268-291], the invoice for the survey [292], and invoices for the works to the soffits and guttering [293 & 294].

19. The Tribunal inspected the property before the hearing in the presence of Mr Murphy, Mr Boon, Mr Beamish and Ms Beamish. The Tribunal examined the internal communal areas, the exterior of the property and the various works done to it, the front and rear gardens and the car parking space. The Tribunal found the property and gardens in good order. The Tribunal noted that new managing agents, SDL Bigwood, had been appointed.

The Property

20. The property which is the subject of this application is one bedroom ground floor flat within a purpose built block of four flats on a small estate comprising the block and six houses built in 1982.

21. The block is constructed of brick cavity walls with a pitched roof finished with concrete interlocking tiles. The eaves have soffits with downpipes and guttering in white uPVC. The windows to the flats are white double glazed uPVC units. The communal window is in a timber frame painted in white gloss. The door to the block is timber finished in brown stain and part glazed. The Tribunal observed no signs of neglect with the property exterior which on the whole seemed to be in good condition.

22. The block is on two levels with two flats on the ground floor and two flats on the first floor. The exterior door to the block leads into a communal hallway with a high ceiling above the landing to the first floor flats. The walls are fair face brick. The flooring is of "Marley" tiles. Access to the first floor is via an open tread timber stair with timber risers and ranch style balustrade leads. The Tribunal observed meter cupboards in the hallway, a fire exit sign above the communal door which had been fixed with a closer, and notice-board which had various notices affixed from the new managing agents.

23. The approach to the block from the public highway is up a series of steep concrete steps with hand rails either side which had been painted black. The concrete path at the top of the steps led to the communal door and then round the side of the block adjoining 11 Stainers Close to the rear of the property. At the front there are two areas either side of the path which are laid to lawn with a front retaining wall.

24. At the rear the path leads to a concrete area on two levels. A drying area and bin store is located on the lower level. The higher level which is accessed by a short flight of concrete steps with a handrail is used as a communal patio and has a small flower border at the rear, and iron railings facing the building The raised area is supported by a brick wall. The boundaries with the neighbouring buildings are marked with wooden panel fencing.

25. The Tribunal observed the works done to the access ways and the step to the communal door. The Tribunal noted the tidy condition of the front garden and the outside communal area at the rear of the property. There were signs of neglect in relation to the ironwork and brickwork on the raised patio and there was slight movement in the hand rail at the front steps.

26. The flat has a designated parking space in a communal parking area for houses and flats in the development. The car park area is accessed along a concrete way between the houses at 3 and 4 Stainers Close. The arrangements for maintaining and contributing to the repairs of the car park area are unclear, and did not form part of the service charge in dispute.

The Lease

27. Mr Murphy purchased the property some eleven years ago and is his sole and main residence. Mr Murphy holds a long lease of the property for a term of 999 years with effect from 18 October 1982 and made between John Eric Clarke of the one part and William Taylor of the other part and executed on 23 December 1982 [107-121].

28. Under the terms of the lease the Tenant is required to pay rent of £15 per annum in advance on 25 December in each year and a just and fair contribution to the expenses of the Landlord as additional rent. The Landlord required each Tenant to contribute an equal share to his expenses which was one quarter or 25 per cent.

29. The areas of expenditure upon which the Landlord can recover a contribution from the Tenant are set out in clause 1(b)(i) –(iv) of the lease which states:

i. In performing the Landlord's obligations as to repair, maintenance and insurance.
ii. The payment of the proper fees of the surveyor or agent appointed by the Landlord in connection with the carrying out of any of the repairs and maintenance referred to.
iii. The payment of rent, rates, taxes, water, gas and electricity and other outgoings in respect of the building not included in any demise in this building.
iv. Providing such services, facilities, and amenities or in carrying out works or otherwise incurring expenditure as in the Landlord's absolute discretion deem necessary for the general benefit of the buildings and its tenants whether or not the Landlord has covenanted to incur such expenditure or provide such services, facilities and amenities.

30. Clause 4 sub paragraphs (1) to (3) of the Lease sets out the Landlord's repairing and maintenance obligations:

- At all times to keep in good and substantial repair and in clean and proper order and condition those parts and appurtenances of the building which are not included in the demise of the property.
- As often as reasonably necessary to decorate the external and internal communal parts of the building previously decorated in a proper and workmanlike manner and to keep all internal parts of the building clean and lighted.
- To keep in good order the grounds of the building which are not included in the demise of the property.

The Issues

31. The Tribunal accepted the Applicant had authority under the lease to recover the expenses claimed under the disputed service charges except a provision for reserve funds.

32. Mr Boon acknowledged there was no clause in the lease which specifically mentioned the creation of a reserve or a sinking fund. Mr Boon, however, sought to argue that clause 1(b) and the proviso to the clause enabled the Landlord to demand contributions from the Tenant for anticipated expenditure which could be allocated to reserves.

33. The Tribunal disagrees with Mr Boon's construction of the clauses in the lease. The Tribunal observes the lease is an old lease and that the relevant provisions on their own are capable of various interpretations. The Tribunal considers the correct way to approach the construction is to examine the relevant provisions in the context of treating the service charge as payment of additional rent. There is no separate mechanism within the lease for the accounting of service charges.

34. The Tribunal starts with the payment clause followed by the obligations to contribute towards the Landlord's expenses:

> " ..... TO HOLD the same unto the Tenant for the term of 999 years from the 18 October 1982 paying therefor during the said term the rent of £15 in advance on the 25 day of December in each year .....
>
> (b) There shall also be paid by way of further or additional rent such sum or sums to be assessed in manner referred to in this clause as shall be a just and fair proportion of the amount which the Landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure: -
>
> PROVIDED THAT all such sums shall from time to time be assessed by the surveyor or agent for the time being of the Landlord and such sums shall be paid by the Tenant within 28 days of being demanded".

35. In the Tribunal's view the lease establishes that rent including additional rent is payable annually in advance on 25 December for the 12 month period ending on 24 December in the following year. Prior to 25 December in each year the Landlord or his agent is required to assess the anticipated expenditure for the coming year having regard to sums already expended in the previous year; and issue a demand payable on 25 December. The Tenant has 28 days from 25 December in which to meet the demand.

36. The Tribunal considers that anticipated expenditure is restricted to expenditure likely to be incurred in the coming year starting 25 December. The Tribunal notes there is no provision in the lease for the carry forward of surplus income, in which case, any surplus should be returned to the Tenant.

37. Mr Boon prepared his case for the Respondent on the basis of the "Scott Schedules" [171] [181 -186] completed by Mr Murphy. The bundle, however, included Mr Murphy's defence to the claim which went wider than the issues identified in the Scott Schedule.

38. In the light of the evidence in the documents bundle the Tribunal took the view that the overriding objective of ensuring a just and fair hearing could only be achieved by examining each of the charges in the two years in question. Mr Boon is an experienced advocate and to his credit did not raise substantive objections to the course proposed by the Tribunal. Mr Boon took advantage of the luncheon adjournment to consider the invoices of those charges not mentioned in the Scott schedule and disputed by Mr Murphy. The Tribunal applied its own expertise in a transparent manner in evaluating the parties' arguments and evidence.

39. The Tribunal considers the actual expenditure for each year in question which is summarised in the Service Charge accounts from 25 December 2013 to 24 December 2014 [139].

Service Charge 25/12/2012 – 24/12/2013

40. The total expenditure for 2012/13 was £5,172 of which Mr Murphy was required to contribute £1,293.

41. Under the heading of Repairs and Maintenance Mr Murphy made no challenge to the reasonableness of the charges for electrical maintenance (£45.48), and the preparation of health and safety report (£365.40). Mr Murphy challenged the expenditure on general repairs and sundries (£431.28), out of hours service (£57.60) and cleaning (£70).

42. The items expended under general repairs and sundries were supply fire action notices (£56.28), fill gaps between steps, secure handrail and paint step edges (£240), and one-off deep clean (£135).

43. The invoice for fire action notices [261] referred to three signs, an initial fire action sign (£21.30 plus VAT) and two subsequent fire/action sign (£25.60 plus VAT). Mr Murphy considered the charge for fitting the sign (£50) excessive. Mr Murphy also said that he could purchase a large fire exit sign from Hursts, a local hardware shop for £6.49 which was cheaper than the one affixed.

44. The Tribunal only saw one sign at the property relating to fire which was a fire exit sign on the inside wall above the communal door. Mr Murphy said there were no other signs relating to fire in the property. Mr Beamish could not recall noticing another sign at the property, although he did refer to the health and safety report which mentioned a trip sign under hazard 5 [228]. The Tribunal notes the invoice [261] makes no mention of a charge for fitting the signs in the building. It would appear that Mr Murphy's reference to a contractor attending the building to affix the fire sign occurred in 2015.

45. The Tribunal decides on the evidence presented that just one sign was affixed in the building which was the initial fire/action sign. The Tribunal, therefore, disallows, the charges for the subsequent fire/action signs amounting to £25.60 plus VAT (£30.72) which reduces the charge for notices to £25.56.

46. The repairs to the steps and paths were carried out by a sole trader under the trading name of N.E Property Maintenance who was based in Bournemouth. The works involved remedying hazards identified in the health and safety report, and did not involve the construction of the step outside the communal door. The amount charged was £240 [262]. The section in the order sheet [263] dealing with the details of the attendance of the contractor was blank despite the warning that it must be completed to ensure full payment. Mr Murphy considered the charge excessive for the jobs undertaken. Also according to Mr Murphy the costs to the Tenants were increased by using a contractor from the mainland rather than from the Island.

47. Mr Murphy did not produce any alternative quotations for the works. The Tribunal notes the construction of the small step outside the communal door which was carried out by a local tradesperson cost £90 [214]. The Tribunal considers the works done by N.E Property Maintenance was more extensive, and that in the round a charge of £240 was reasonable for the tasks undertaken.

48. Mr Murphy challenged the charges for cleaning which in 2012/13 comprised the deep clean of £135 in the week commencing 14 October 2013 [173], and two standard cleans of £35 each undertaken in the week commencing 2 December 2013 [177] and the week commencing 24 December 2013 [179].

49. The deep clean involved high and low level dusting, vacuum of all skirting boards, banisters and brickwork, floors and stairs, cleaning the inside and outside of the windows and door, mopping hard floor and remove chewing gum. The order sheet revealed the contractor took three hours on the deep clean. A standard clean involved sweep, dust and mop communal areas, and clean the outside and inside of the door and window. There was no indication in the papers of the time it took the contractor to carry out a standard clean.

50. Mr Murphy contended the cost of the deep clean was excessive having regard to the size of the communal area. Mr Murphy also questioned whether it gave for value for money, having regard to the fact that former owner of flat 7 mopped the floor regularly until she sadly passed away in 2014. Mr Murphy accepted that he was not in a position to argue against the cost of the standard clean which comprised £25 for mopping and dusting of the communal areas, and £10 for cleaning the window and door.

51. The Tribunal confirms that the £70 charge for the two standard cleans was reasonable. The Tribunal is troubled by the charge for the deep clean which works out at £45 per hour. The Tribunal has difficulty in comprehending the wide difference between the deep and standard cleans having regard to the nature of the communal space which was limited in size with one window and one door. The Tribunal decides that a charge of £135 for a deep clean is unreasonable as is an hourly rate of £45. The Tribunal determines that a charge of £70 is reasonable.

52. Remus charged the lessees £57.60 (£48 plus VAT of £9.60) [189][1] for providing an out of hours service for dealing with emergencies.

53. According to Remus, the out of hours message on its office telephone gave the phone number for the out of hours service for urgent issues. A call centre handled this service which did not have an answer phone message but if the line was busy a recorded message came on line saying that if the call was important please hold.

54. Mr Murphy disputed whether such a service was provided. Mr Murphy said that he phoned the out of hours service on two occasions (Tuesday and Saturday) and was advised by an answer message to call back when the office was open in normal working hours. Mr Murphy made these calls in response to comments made by other residents about whether Remus provided such a service.

55. The Tribunal accepts Mr Murphy's evidence about his attempts to contact Remus out of office hours. The Tribunal is also concerned that Remus offered no explanation of how the charge was calculated which presumably applied to all its managed properties. The Tribunal, therefore, disallows the charge for out of hours service in the sum of £57.50.

56. The Tribunal intends to consider together the management fee charged by Remus for both years in question 2012/13 and 2013/14.

57. The management fee charged by Remus for 2012/13 was £984 which was based on a fixed charge of £205 plus VAT for each flat. The fee for 2013/14 was £1,008 derived from a fixed charge of £210 plus VAT. The services provided by Remus for the fixed fee were set out in a document entitled "Management Fees" [267] which was available to tenants on request.

[1] No invoice for 2012/13. Invoice for 2014.

58. Mr Murphy was highly critical of the services provided by Remus. According to Mr Murphy, Remus was not responsive and did not answer queries put by tenants. Mr Murphy accused Remus of bullying him and being backed into a corner. Mr Murphy said that Remus hounded him for money without acting on his requests for work to be done or without dealing with his concerns about the quality of work carried out by contractors.

59. Mr Murphy referred to statements from the tenants of flats 7 and 10 Mrs Galpin [91& 92] and Ms Clark and Mr Pritty [93] who complained about the overgrown garden and lack of maintenance at the property.

60. Mr Murphy also obtained statements from Mr Barron [266] the former leaseholder of flat 7 and Messrs Marshall and Spy the leaseholders of flay 10 [258]. They remarked on the poor value for money services provided by Remus.

61. Mr Barron stated that Remus was the worst management company he had ever dealt with. Mr Barron believed their charges were in no way to the benefit of flat owners and that they were so bad he sold his flat to get rid of Remus. Mr Barron cited the example of the original quotation obtained by Remus to replace the soffits and guttering which was in the region of £3,500. Mr Barron pointed out that he found a local company to do the work for under £1,000. Further Mr Barron said there was supposed to be a gardener/handyman to cut the grass and keep the back of the building clear of rubbish but he never saw such a person. Finally Mr Barron referred to the incident where Remus refused to refund him after he was charged twice for building insurance.

62. Mr Boon disagreed with Mr Murphy's depiction of the services provided by Remus. Mr Boon cited the example of the contractor returning to rectify the fault with the front step at no cost as an example of Remus responsiveness to resident's request. Mr Boon said the statements from the tenants (Mrs Galpin and Ms Clark and Mr Pritty) referred to events in 2015 which was not under consideration by the Tribunal. Mr Beamish pointed out that the basic management fee charged by Remus was modest.

63. The Tribunal referred Mr Boon to the gaps in the cleaning and in the gardening of the property. In 2012/13 there was no cleaning of the communal areas in the property until October 2013. In 2013/14 the cleaning stopped in May 2014 and not resumed until October 2014. Remus organised no maintenance of the garden except for a blitz over two days in May 2014.

64. Mr Boon was unable to offer an explanation for why Remus did not organise the cleaning and gardening in a systematic manner. Mr Boon advised that Remus had encountered difficulties in finding contractors to carry out works because of Mr Murphy's obstructive attitude towards contractors attending the property. Mr Murphy said he had only been obstructive on two occasions which was with the contractor returning to paint the inside of the communal window, and with the contractors who were allocated to remove egg stains from the front of the property.

65. The Tribunal referred Mr Boon to the letter in the file [155] from Remus regarding the overpayment of the building insurance. Ms Ellis of Remus said that it had been brought to her attention that an amount of £900 had been charged for building insurance which was in error because the freeholder had already collected it direct from each leaseholder. After apologising for the error, Ms Ellis said that Remus had reallocated the sum paid for insurance to general repairs.

66. Mr Boon was not overly concerned with the manner in which Remus handled the double charging of the insurance premium. Mr Boon pointed out that the use made of the overcharge was for a purpose (general repairs) which was authorised by the lease.

67. Mr Boon informed the Tribunal that Remus had declined the opportunity to attend the hearing to give its version of events.

68. The Tribunal finds that Remus did not manage the property to a reasonable standard. The Tribunal is satisfied that Remus' management of the property was chaotic which was demonstrated by its failure to organise cleaning and gardening on a regular basis. The Tribunal considers that Remus was high-handed in its dealings with the leaseholders which was illustrated by its handling of the double charging of insurance, and by the statements of Mr Murphy and Mr Barron. The Tribunal is not convinced with Mr Beamish' assertions about the modesty of the fixed fee. Remus is an established managing agent and would not knowingly enter into a loss-making contract. The Applicant gave Remus the opportunity to attend the hearing to counter Mr Murphy's assertions but chose not to do so.

69. The Tribunal determines that the charge for management fee in 2012/13 shall be reduced by 25 per cent (£246) to give an amount of £738.

70. Mr Murphy made no challenge to the reasonableness of the charges for electricity (£20.27), accountancy (£168), bank charges (£8) and professional fees (£38.40). There was no charge for gardening in 2012/13.

71. The final element of the 2012/13 service charge account was a transfer of £2,983 to general reserve. The Tribunal has already given reasons for why such a transfer was not permissible under the terms of the lease.

72. The Tribunal, however, notes from the balancing statement for the year ended 24 December 2014 that the sum of £2,983 was applied to building works (£1,620), surveyor's fee (£420) and building condition report (£850). Mr Boon supplied the invoices for these expenditure items [295, 296 & 297] which were recoverable from the Tenants under the terms of the lease.

73. Mr Murphy accepted the costs of the building works which involved the installation of new fascias, soffits and downpipes were reasonable. Mr Murphy adduced no evidence to suggest that the charges of the surveyors for the condition report and supervising the consultation were excessive.

74. Given the above circumstances the Tribunal takes a pragmatic view and allows the transfer to reserve funds to remain in the 2012/13 accounts because the monies have been applied to expenditure in 2013/14 which has been reasonably incurred and recoverable from the Tenants under the terms of the lease.

75. The Tribunal decides that the service charge of £5,172 for 2012/13 should be reduced by £398.70 which gives a charge of £4,773 rounded down. Mr Murphy's contribution is £1,193 rounded down.

Service Charge 25/12/2013 – 24/12/2014

76. The total expenditure for 2013/14 was £4,296 of which Mr Murphy was required to contribute £1,074.

77. Mr Murphy did not contest the charges for asbestos inspection (£189.10), cleaning (£200), accountancy (£168), bank charges (£8), professional fees (£75.60), and buildings insurance (£870.42).

78. For the reasons given under 2012/13, the Tribunal disallows the charge of £57.60 for out of hours service and reduces the management fee by 25 per cent (£252) to £756.

79. For reasons advanced earlier the Tribunal disallows the transfer of £539.66 to general reserves because it is not permitted under the terms of the lease. Unlike 2012/13 the Tribunal has no information on whether the sum transferred has been applied to expenditure that is both reasonable and recoverable under the lease.

80. The three outstanding expenditure heads for examination by the Tribunal are £744.92 for general repairs and sundries. £360 for gardening, and £74.70 for electricity.

81. The £744.92 comprised 12 discrete items of work. Mr Murphy did not object to the following expenditure: install door closer (£58.49), sand paint front railings (£49.88), supply and install drain covers (£90.91), and replace drain frames (£122.42).

82. Mr Murphy objections to the remaining items of expenditure were as follows:

(a) Removal of wooden shuttering from front step to street level (£25) which took 30 minutes to do on 1 March 2014. Mr Murphy considered that this should have been done as part of the original job which appeared in 2013/14 accounts as repair front step at a cost of £51.23.

(b) Removal of bulk waste (£37) which was carried out on 8 July 2014 and involved the removal of non domestic waste and disposal at a registered waste site. The charge included £12 for a refuse tipping charge. Remus notified the contractor on 1 April 2014. Mr Murphy contended that the charge was unreasonable because the contractor did not remove all the non-domestic waste from the property.

(c) Install a small grit bin on 28 October 2014 which involved the purchase of bin and grit (£54) and labour of £25. This job was notified to the contractor on 24 March 2014. Mr Murphy queried the necessity for a grit bin which he said had never been used by the residents since its installation. Mr Murphy also said he could purchase a 24 litre plastic box for £4 and a packet of rock salt with shovel for £7.99 which would have achieved a saving of £67 to the tenants. Mr Boon pointed out that the installation of a grit box was a health and safety recommendation. Mr Beamish doubted the durability of the 24 litre plastic box which Mr Murphy had priced in Tescos.

(d) On 21 November 2014 a charge of £25 was made for the closing of a meter cupboard door. Mr Murphy did not understand why Remus had not contacted a resident to close the door rather than calling in a contractor. Remus had advised Mr Boon that the open door had been identified at an inspection of the property.

(e) On 5 December 2014 a small step was installed outside the communal door to reduce the step up at a cost of £90. Remus notified the contractor on 17 October 2014 of the requirement to do the job. Mr Murphy contended that the step was poorly constructed and not needed by the residents at the property. Mr Murphy said the step lasted a month before breaking with the result that the contractor had to be called in to repair the step. Remus advised Mr Boon that the contractor carried out the repair at no extra cost. Mr Beamish considered that the step was an attractive feature which had been built to a reasonable standard.

(f) On 22 December 2014 a contractor attended the property to paint the timber interior of the communal window. The same contractor had painted the exterior of the window on an earlier date at a charge of £85. Mr Murphy prevented the contractor from carrying out this job because Mr Murphy believed that the contractor should have painted the interior at the sane time as the exterior. The contractor charged £25 for attending the property. Mr Beamish considered it made sense to paint the interior separately because it allowed the paint to dry on the exterior.

83. The Tribunal observes that the objections of Mr Murphy related to work undertaken by the same local contractor who had a minimum charge of £25 for attending the property. The Tribunal takes the view that Remus could have organised the work of the local contractor better so as to cut out unnecessary charges for the tenants. For example the installation of the grit bin could have been done at the same time as the removal of the bulk waste. The Tribunal notes that Remus notified the contractor of the grit bin in March 2014 well before the date of the collection of the bulk waste. Equally the Tribunal considers the cost of the removal of the wooden shuttering should have been part of the cost of repair to the front step and not an additional cost. The Tribunal, therefore, determines there should be a reduction overall of £50 in the general repairs and sundries expenditure to reflect the efficiencies that should have been made in the organisation of the works allocated to the local contractor.

84. Apart from the deduction of £50 the Tribunal considers the expenditure incurred on the challenged items reasonable. The Tribunal agrees with the Applicant that the installation of a grit box was a health and safety recommendation, and that the 24 litre box was not fit for purpose. The Tribunal notes that Remus accepted that the original work to the step to the communal door was not to the required standard. However, the defects in its construction were rectified at no extra cost.

85. The charge for gardening was £360 which according to the invoice was carried out over two days at the beginning of June 2014 [296-297]. The instructions, however, stated that the contractor attended only on 2 June 2014 commencing at 10.00am and departing at 5.00pm.

86. Remus had arranged no gardening by a contractor in the period prior to June 2014 stretching back to 1 January 2013, and in the subsequent period ending on 24 December 2014.

87. Mr Murphy considered the charge of £360 too high having regard to the size of the lawns and the small flower border at the rear of the property. Mr Boon said that the cost of the works was comparable to the quotation in the sum of £80 obtained by Mr Murphy in October 2015 to trim the mixed hedge on the rear wall [63].

88. The Tribunal agrees with Mr Murphy in that the charge of £360 is excessive for the size of garden involved. Also the Tribunal considers that the costs were escalated unnecessarily due to Remus' failure to implement a regular gardening regime at the property. Finally the amount spent on the gardening went to waste because no action was taken to maintain the garden thereafter in a tidy state.

89. The Tribunal decides that the charge of £360 for gardening was not reasonably incurred and should be reduced by 50 per cent which leaves a sum of £180.

90. The charge for communal electricity increased from £20.27 in 2013 to £74.70 in 2014. The Applicant produced bills to substantiate the amount of the charge [193-201].

91. Mr Murphy challenged the accuracy of the costs pointing out that the communal costs were for two lights in the communal hallway. Mr Murphy did not understand why the costs fluctuated so widely between the two years in question. Mr Murphy also said that he had asked for the installation of push button switches in the communal area so as to conserve electricity use.

92. Mr Boon said the most likely explanation for the increased costs was that when Remus took over the building the lights were not working. The lights have now been repaired which has resulted in greater use of electricity. Mr Beamish doubted whether the installation of push buttons would be cost effective. In his opinion the payback period would be too long.

93. The Tribunal is satisfied with the Applicant's explanation and decides that the costs on electricity have been reasonably incurred.

94. The Tribunal decides that the service charge of £4,296 for 2013/14 should be reduced by £1,079.26 which gives a charge of £3,216 rounded down. Mr Murphy's contribution is £804.

RIGHTS OF APPEAL

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

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

Section 27A

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

(e) the manner in which it is payable.

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

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

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

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