9029

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AL/LSC/2012/0673** **LON/00AL/LSC/2012/0773**
Properties	:	**Flats 7-10 Amhurst Walk** **Thamesmead, London SE28 8RJ**
Applicants	:	**Mohammed Imran Flat 7** **Dean Murphy Flat 8** **Stephen Davis Flat 9** **Christopher Davis Flat 10**
Representatives	:	**Mr C Davis and Mr S Davis**
Respondent	:	**Holding and Management (Solitaire) Limited**
Representative	:	**Mr A Rankohi, Legal Consultant** **Mr D Foster. Property Manager** **OM Property Management**
Type of Application	:	**Section 27a Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Members	:	**Judge John Hewitt Chairman** **Mr Neil Martindale FRICS** **Ms L Walter MA (Hons)**
Date and venue of Hearing	:	**9 July 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8 August 2013**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:
   - 1.1 The amount payable by the Applicants to the Respondent in respect of the disputed service charges is the amount set out in the column headed 'Tribunal Decision' in the Schedule attached to this Decision;
   - 1.2 No order shall be made on the Applicants' application that the Tribunal require the Respondent to reimburse the Applicants with the fees paid by the Applicants in connection with these proceedings;
   - 1.3 By consent an order shall be made, and is hereby made, pursuant to section 20C Landlord and Tenant Act 1985 (the Act) to the effect that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Applicants;
   - 1.4 The variable administration charges claimed by the Respondent and set out in paragraph 56 below are not payable by the Applicant(s) against whom they are claimed; and
   - 1.5 Any application to settle a cash account as between any of the Applicants and the Respondent shall be made no later than **5pm Friday 27 September 2013** and shall be made in accordance with the directions set out in paragraph 70 below.

2. The reasons for our decisions are set out below.

NB 1 Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

NB 2 The application was originally made to the Leasehold Valuation Tribunal. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.

Procedural background

3. The Applicants made an application under section 27A of the Act for the amount of certain disputed service charges payable by them to the Respondent to be determined. At a pre-trial review held on 31 October 2012 the Applicants agreed to limit their application to the years 2006 to 2012. In the event the evidence presented did not include the year ending 30 September 2012. We have made no determination in respect of that year and if there are any issues concerning that year, it is open to the parties to bring a separate section 27A application for those issues to be determined.

4. The application came on for hearing on 8 & 9 April 2013. It became apparent that the case was not in a fit and ready state to be heard. The

issues were clarified and further directions were issued. Under their leases the Applicants are obliged to pay a service charge in respect of the small block in which their respective flats are situate and separately an estate service charge covering a much wider estate, one comprising some 55 homes. At the hearing in April the Applicants withdrew that part of their application as concerned the estate service charge. Evidently they wished to collaborate with others liable to contribute to the estate service charge and mount a collective challenge.

5. Thus we were concerned solely with the service charges payable in respect of the block containing the four flats 7-10 Amhurst Walk.

6. At all material times the Applicants have represented themselves and the Respondent has been represented by Mr Rankohi a legal consultant with OM Property Management, the Respondent's managing agents

7. The application came on for hearing before us on 9 July 2013. It started at 10:00 and concluded at 16:10. Oral evidence was given Mr Christopher Davis, Mr Stephen Davis and by Mr Danny Foster who is an experienced property manager with OM Property Management and who has been the property manager for the subject development since May 2011. The witnesses were cross-examined. Mr Rankohi made submissions on a number of matters

The Properties and the leases

8. As mentioned the four self-contained flats are within a small block. There are adjacent car parking spaces which are demised. The block was constructed by Barratt Homes in or about 1995, evidently as part of a wider development known as Lakeside Park.

9. We were told that the four leases were in common form as regards matters material to us. A sample lease, that for what was described as Plot 44, is at [8].

10. There are three parties to the lease:

Barratt London Limited as the Developer:
David Malcolm Nicolson as the Lessee; and
Holding and Management (Solitaire) Limited as the Company.

The lease demised the flat for a term of 125 years from 25 March 1995 at a ground rent of £50 per year and on other terms and conditions as set out in the lease.

The lease provides for the payment of a Service Charge in respect of the block being one quarter of the costs incurred and the payment of an Estate Charge being one 55th of the costs incurred

11. By clause 4 of the lease [14] the Company covenanted with the Lessee to observe and perform the obligations set out in the Sixth Schedule. There was no dispute that the structure of the lease was that the

Company was to insure the block, keep it in repair and maintained and to provide other services.

12. By clause 3.2 of the lease [13] the Lessee covenanted to pay to the Company the Service Charge by two equal instalments. There are fairly standard provisions for an estimate of the service charges to be prepared, for the payment of sums on account and for year-end balancing debits or credits as the case may be. The detailed provisions concerning the Service Charge are set out in the Fourth and Fifth Schedules to the lease. There was no dispute about the structure or these provisions.

13. Evidently the Service Charge accounting period was changed from 1 October to 30 September to bring it in line with that applicable to the Estate Charge.

14. On 12 May 1998 the Respondent was registered at Land Registry as the proprietor of the freehold interest of the estate. Thus the Respondent is now both the landlord and the Company responsible to operate the service charge provisions of the lease.

The service charges in dispute

15. The service charges in dispute are helpfully set out in a schedule at [147]. For ease of reference we have adopted and adapted that schedule. We have entered on it the sums we find are payable and we have added some notes which we hope may be of some assistance to the parties. The result of this work is the Schedule attached to this Decision.

    It is convenient to summarise our findings on the service charges in dispute as set out below.

Auto Jet Invoice £82.25

16. The Respondent explained that this related to a call-out in response to a complaint that there was a problem with the drains. Evidently the plumber who was called out established that Thames Water had responsibility for the subject drain and the problem was passed over to Thames Water to be dealt with.

17. The gist of the case for the Applicants was that the Respondent's property manager should have been aware that the subject drain was the responsibility of Thames Water and should have contacted Thames Water in the first instance. They say the plumber should not have been called out and thus the expense was not reasonably incurred. They did not assert that the expense was unreasonable in amount.

18. It was not in dispute that the call to the Respondent's managing agent was made by a lessee or occupier of one of the four flats. There was no evidence before us as to the detail of that report or what the exact problem was said to be. The report may have been detailed in nature or it may have in rather vague terms. It may have been made during office hours or it may have been made outside of those hours; perhaps to a

call centre. It may or may not have been classed as an emergency or urgent.

19. Bearing in mind the minimal evidence before us we conclude that where a managing agent receives a report of a drain problem it is not an unreasonable response to send out a tradesman to assess the problem and to deal with it if appropriate. If, on investigation, the problem is ascertained to be the responsibility of another party appropriate action can be taken. There was no evidence before us that the decision to call-out a plumber was taken by the property manager at the time. Accordingly we find that the expense was reasonably incurred and was reasonable in amount.

Bank Interest £75.00

20. There was no evidence before us that this expense had been incurred by the Respondent and there was no evidence as to how or by whom the sum had been calculated.

21. In the absence of any evidence or information about this we were not satisfied that the expenditure had been incurred.

Replacement Keys £17.63

22. The Respondent was unable to provide any evidence or information about this alleged expenditure. There was a suggestion that cleaners might have mislaid a set of keys and duplicates had to be purchased but this was pure speculation. In any event as will become clear shortly we rather doubt that any cleaning was being done during the year 2007.

23. In the absence of any evidence or information about this we were not satisfied that the expenditure had been incurred. Even if the expenditure had been incurred we are far from persuaded that it was reasonably incurred. If cleaning contractors had lost a set of keys they ought to have borne the cost of a replacement set.

Rubbish Removal £115.00

24. The invoice is dated 9 August 2009 but was not included in the trial bundle. It was said that the invoice referred to removal of abandoned items. Mr Christopher Davis said in his evidence that he had made several complaints to OM Property Management urging them to have some abandoned items removed from the balcony area but they never did. In the event they were removed by some of the lessees. Mr Davis produced some supporting photographs and he drew attention to email on the subject at [306].

25. This event occurred before Mr Foster's time and he was unable to assist us any information. Mr Rankohi frankly accepted that the invoice might relate to removal of abandoned items from the bin store rather than the balcony and the bin store is not part of the subject service charge regime.

26. We accept the evidence of Mr Davis that OM Property Management did not arrange the removal of items from the balcony area. If, as seems more likely than not, the invoice relates to removal of items from the bin store, then it should not be included in the service charge account for the subject block. We have thus disallowed this expense.

Digital Upgrade Works

27. There were two challenges to this expenditure. First it was said that it was one project and should have been the subject of consultation under section 20 of the Act, and secondly it was said that it was not reasonably incurred. That said Mr Christopher Davis accepted that he did not know what the work was for and had not made any enquiry of any local aerial contractors as to whether such work was really necessary or not, nor whether the cost was reasonable or not.

28. Mr Foster explained that there were three separate invoices. They are at [369, 370 and 371]. The first relates to a survey to check digital transmission and HE earth bonding. Earth bonding works were carried out in January 2010 at a cost of £310.20 and the DTT upgrade was carried out in April 2010 at a cost of £760.18.

29. Mr Foster satisfied us that it was reasonable to incur these costs and that they were reasonable in amount.

External Redecorations 2007 £1,108.62

30. Rather strangely this expenditure did not feature in the 2007 service charge account, but the sum was simply withdrawn from the reserve fund [246].

31. Mr Rankohi accepted that the works were not carried out as claimed. He also accepted that the Respondent must reimburse the reserve fund with the sum of £1,108.62 which has been incorrectly withdrawn from the reserves.

External Redecorations 2008 £1,878.12

32. Again and rather strangely this expenditure did not feature in the 2008 service charge account, but the sum was simply withdrawn from the reserve fund [251].

33. Mr Rankohi wished to rely upon a witness statement of Mr Paul Devine, the contractor [140]. Mr Devine did not attend the hearing. Evidently he was reluctant to do so without adequate compensation for his time. The gist of his evidence was that he subcontracted this job to someone called Lee. All that Mr Devine was able to produce was an internal *'Appointment of Contract'* appointing the job to Lee. This document is dated 12 November 2007. Against the printed words 'Subcontractors invoice/s received' is a word *'yes'* written in manuscript. Part way through the hearing Mr Rankohi was able to produce an invoice issued by The Divine Decorating Company. We have page numbered it [142/1]. It is dated 16 November 2007. It is in the sum of £1440.00 + VAT of £252.00, a total of £1,692.00.

34. Mr Christopher Davis and Mr Stephen Davis both said that no external redecorations have ever been carried out to the block, whether in 2007 or at all. Both have lived in their respective flats since before 2007 and both were living there in November 2007 when the works were allegedly carried out.

35. If external redecorations had been carried out the works would have involved painting of the timber window frames to three out of the four flats, painting the timber main entrance door frame, painting of the balcony and rendering. Both Mr Davis' were adamant that if such work had been carried out they would have been aware of it. Mr Stephen Davis produced some photographs to support his evidence. Mr Davis drew attention to a site inspection report issued by Peverel OM and dated 3 December 2009 [284] which records *"External porch area needs repainting"* He also relied upon a site inspection report dated 24 November 2010 and made by Ms Bethan O'Donnell who was the OM property manager at the time [279] which records *'External Redecorations needed'*. Further his evidence was that he had been chasing OM for years to get the external redecorations undertaken and he took a special interest in such works. Mr Davis produced an email dated 29 March 2011 [329] issued by Beth Lomax of OM in reply to his email dated 25 March 2011. Against Mr Davis' question *'Can you explain why no redecoration work was ever done since it was built?'* is the answer *'We can advise that the external redecoration of the building is due to be done this year and we are currently completing the specification for this work.'* We observe in passing that despite this assurance the external redecoration works have still not been undertaken.

36. Mr Rankohi did not wish to cross-examine the two Mr Davis' on their evidence.

37. The unchallenged evidence of the two Mr Davis' was compelling. We find they are witnesses on whom we can rely with confidence. We have no hesitation in accepting their evidence. Not only was it frank and measured, it was also corroborated with photographs and the December 2009 and November 2010 site visit records issued by OM and the exchange of email in March 2011.

38. Thus we find as a fact that no external redecorations were carried out in November 2007 or at all. The sum of £1,878.12 withdrawn from the reserve fund must be reinstated.

Reserves

39. These sums were challenged by the Applicants on the basis that they did not understand why the allocation of reserves was introduced in 2007. It was not in dispute that paragraph 2(ii) of Part III of the Fourth Schedule to the lease [31] provides that the annual service charge can include: *" an appropriate amount as a reserve for or towards those of the matters mentioned in ... including (without prejudice to the*

generality of the foregoing) such matters as the decorating of the exterior of the Block the repair of the structure thereof and the repair of the drains"

40. The approach to the reserve account by the Respondent has been sloppy. It is not clear why there should be a reserve for 'Risk Assessment'. Such expenditure is routine expenditure and should form part of the annual estimate and service charge account.

41. We have allowed the items to remain for several reasons. First the 'Risk Assessment' costs have been paid from the reserve account and have not been duplicated in the service charge account. Secondly the lease permits the creation of a reserve fund and in our accumulated experience it is generally good estate management practice and to the benefit of lessees for a well-managed reserve fund to be in existence. A concern we have in this case is that although the Respondent created a reserve fund in 2007 and has allocated sums to it every year since it has not actually carried out any works which the fund was designed to cover. More seriously it has on two occasions improperly withdrawn sums from the reserve fund in respect of works which were not actually carried out. We can see the force in an argument that it was not reasonable to allocate sums to a reserve fund and then not carry out any works which the reserve fund was designed to cover. We can also understand why the Applicants are nervous about the reserve fund given the manner in which the Respondent, through its managing agents, has handled the fund.

42. Balancing the competing arguments we conclude that it will be sensible to retain the allocations made. During the course of the hearing it became clear that the Applicants are keen to have external redecorations carried out and also other works to remedy years of neglect by the Respondent to both the interior and exterior of the block, and that the Respondent is now willing to manage those works if it is in funds to do so. By retaining the allocations a fund will be available for urgent works to be carried out and we hope this will help achieve the objectives and aspirations of both parties.

Cleaning

43. This very controversial topic spanned every year under review. The evidence of the Applicants was simply that cleaning was not undertaken.

44. Mr Rankohi frankly accepted the Respondent struggled due to lack of evidence. Mr Rankohi was unable to provide any supporting invoices or identify the contractor(s) concerned. He said that invoices must have been issued by the contractors to enable the annual accounts to be prepared but he was unable to provide them. Similarly Mr Rankohi was unable to provide the specification to which the contractors were supposed to work. We find that the generic specification he produced at [300] is of no assistance to us. Mr Rankohi was also unable to provide any evidence that cleaning work had in fact been undertaken. Mr

Rankohi relied upon a site visit report made by Ms Bethan O'Donnell dated 24 November 2010 in which she ranked *'Cleaning'* with a '5' which stands for *'v. good'* and her comment *'Both window cleaning and communal area cleaning'.*

45. In contrast the evidence of both Mr Davis' was to the effect that cleaning did not take place for several years, despite numerous telephone and email complaints. They said the windows were never touched and they were not aware of any cleaning contractor having keys to the block. In the absence of any cleaning being done one of the lessees did some vacuuming of the carpets in some of the common parts. Mr Davis' wished to produce some photographs to support their evidence. Mr Rankohi did not object to them doing so and they were shown to us. Both Mr Davis' did accept that during the year ending 2011 some cleaning took place. This appears to be the cleaning in November 2010 mentioned by Ms O'Donnell. Mr Davis said a record to be completed by the cleaner on each visit was put up in the common parts. It was there for about two and a half months and was then removed.

46. Both Mr Davis' said that if cleaning had taken place they would have expected the following to have been done:

Internal:	Vacuuming of hall and stairway carpets, dusting of the communal doorway and stair handrail and the removal of cobwebs and scuff marks on the walls and paintwork
External:	Sweeping of leaves/litter and maintenance of the planted area

47. The evidence of both Mr Davis' was again graphic and compelling. It was corroborated with photographs and email. We accept it. Mr Rankohi was unable to provide any invoices to support the claimed expenditure. Even had he been able to do so invoices would not of them selves amount to evidence of cleaning being carried out, let alone to an acceptable standard.

48. In these circumstances we have disallowed the cleaning costs in all years save for 2011. The Applicants accepted that in 2011 some cleaning was carried for a short while. Evidently this was stopped by the Respondent allegedly due to shortage of funds arising from substantial arrears. Whether the Respondent was entitled to withdraw services and whether doing so amounts to a breach of covenant on its part is not an issue we have to decide. Doing the best we can with the imperfect materials before us and accepting the evidence of both Mr Davis' that in 2011 some cleaning did take place and drawing on our accumulated experience and expertise we have decided to allow £300 to reflect the reasonable cost of that cleaning.

Management Fees

49. This was another controversial topic which spanned each of the years in issue.

50. Mr Rankohi explained that the fees were based on a unit fee which, over the years ranged from £848 to £1,020 inclusive of VAT. He submitted that this range was reasonable for a small block of four units and within the market norms. The fees were summarised on [94] and a generic menu of the services on offer is at [304]. Mr Rankohi was unable to tell us when the Respondent last went to competitive tender for managing agents' services, although he recognised that it was good practice for landlords to go to competitive tender for all goods and services on a regular basis.

51. The Applicants had not made any enquiries of local managing agents to inform what the local market norm might be for such a block as the subject block. The gist of their complaint was the appalling lack of service provided and the appalling failure on the part of the Respondent to fulfil its contractual obligations to maintain and repair the block and to provide services. Much of these failures they lay at the door of the Respondent's managing agents. In evidence they cited a number of examples. These included the failure to ensure cleaning was undertaken, the failure to attend to routine repairs and maintenance, in particular to the main front door which is insecure, failure to respond to correspondence in a timely way, failure to replace light bulbs which blow, failure to provide appropriate marking and signage and the failure to keep accurate and verifiable accounts amongst others. They illustrated their complaints by the numerous concessions made by the managing agents over the years when errors were drawn to their attention. They also drew attention to the very substantial sums claimed each year for the cost of electricity which the agents must have known was simply too high for a small block with limited lighting in the common parts yet it took years for the agents to get a grip with this issue, sort out the problem and secure a substantial credit from the supplier.

52. Mr Rankohi accepted he was in some difficulty in challenging the evidence of both Mr Davis' because his witness, Mr Foster, had only been in post since May 2011. He accepted that some adverse incidents had occurred and that it would be foolish to pretend they had not or try to deny them. He also accepted that a number of credits were made to the accounts in respect of matters which occurred 6 or 7 years ago and that these were done partly out of good will and partly because it was not economic to spend time investigating historic matters so that the fact of credits should not be taken as an admission of an error or poor quality of service. He did accept that that did not apply to the electricity rebate, a matter on which they were culpable, which they did investigate albeit late and which they did resolve.

53. Again we find the evidence of both Mr Davis' compelling. It is corroborated by email, photographs and admissions. We accept their evidence. We find as a fact that the quality of service provided by the

Respondent's managing agents over the years in question was appallingly low. We were not impressed with the submission made by Mr Rankohi that the property manager made regular visits to inspect the block as part of their management function for which they should be paid when it became apparent that some of inspections were recorded as *"Drive by – all looks ok"* [283 as an example] . We accept that such an inspection might confirm that the block is still standing but it will not confirm much about the quality of cleaning or the condition of the internal common parts.

54. The subject block is unsophisticated such that the level of management required is minimal. We would thus expect a reasonable unit fee to be at the lower end of the range. We accept that a small block of four units does not enable economy of scale to be achieved. The fact that the Respondent may also manage two of three small blocks nearby is not directly relevant. Although the fact that the Respondent does manage the estate is material in that the property manager can undertake a number of tasks in the one visit and share the travel time.

55. In the absence of any evidence from either party as to the local market norm for management of a small block we have to draw on our accumulated experience and expertise in these matters. In doing so we have to bear in mind the very poor level of service actually provided. We conclude that a reasonable unit fee reflecting that level of service would not exceed £425 inclusive of VAT for the year 2006, would not exceed £450.00 inclusive of VAT for the years 2007, 2008,2009 and 2010, and would not exceed £455.00 inclusive of VAT for 2011.

Variable Administration Fees

56. The Respondent has caused or permitted a number of variable administration fees to be entered as debits on all of cash accounts as between each of the Applicants and the Respondent. They are set out on [151-154]. They are summarised as follows:

Flat 7

2006	Court fee	£ 80.00
	Court interest	£ 20.57
	Judgment interest	£ 7.31
2007	Legal fees	£415.26
2008	Legal fees	£105.75
2009	Legal fees	£ 88.11
2010	Late payment fee	£ 57.50
	Administration charge	£ 58.75

Flat 8

2007	Legal fees	£105.75

2011	Administration charge	£ 58.75	
Flat 9			
2009	Late payment charge	£ 57.50	(Conceded by R)
Flat 10			
2008	Legal fees	£108.75	(Conceded by R)
2009	Late payment charge	£ 57.50	(Conceded by R)
	Administration charge	£ 57.50	
2010	Administration charge	£ 58.75	
	Recovery fees	£454.50	
	Recovery fees	£143.75	
2011	Administration charge	£ 60.00	

57. Mr Rankohi explained that the late payment fees and administration charges were imposed when there is non-payment of a sum demanded. He said that an arrears reminder letter is sent out and if there is still non-payment a second letter is sent out which states that a charge will be made. Originally that was £57.50, increasing to £58.75 and then to £60.00 reflecting increases in VAT. Thus the charge is for sending two letters. Mr Rankohi did not know what the cost of preparing the two letters was. He denied that there was duplication with routine management fees. His attention was drawn to [304] which is the menu of services relied upon to support the unit management fee and paragraphs:

"a) Collect service charges from tenants
b) Instruct, with clients consent, solicitors or debt recovery agents in collection of unpaid service charges, subject to any statutory procedures that need to be followed"

58. Mr Rankohi said that these charges were not incurred by or debited/credited to the Respondent. They were imposed by and retained by OM Property Management.

59. Mr Rankohi was not able to provide copies of any demands for any of the sums claimed and he was not able to produce any invoices to support any of the sums claimed.

60. Mr Rankohi conceded that the sum in respect of flat 9 was not payable. He also conceded that in respect of Flat 10 the 2008 Legal fees of £108.75 and the 2009 administration charge of £57.50 were not payable.

61. Mr Rankohi relied upon paragraph 2(b) of the Third Schedule to the lease [23] which is a covenant on the part of the tenant:

"To pay the Company on a full indemnity basis all costs and expenses incurred by the Company or the Company's Solicitors in enforcing payment of any rent, Service Charge, Estate Charge or other monies payable by the Lessee under the terms of this Lease"

Mr Rankohi did not consider that the above obligation was in any way affected by the provisions relating to the service charge expenditure set out in Schedule 5, paragraph 4(a) which he also relied upon and which provides as follows:

"Payment of costs incurred in management

4. To make provision for the payment of all costs and expenses incurred by the Company:

(a) in the running and management of the Block and the collection of the rents and service charges in respect of the flats therein and in the enforcement of the covenants ... and in paying any fees and disbursements to any Managing agents appointed by the Company in respect of the Block and in connection with the collection of rent charges and estate charges therefrom"

62. Both Mr Davis' said that they had never received any demands for any of the charges allegedly owed by them. They had never received any document entitled *'Administration Charges - Summary of Tenants' Rights and Obligations'*
They asserted that the charges were unfair and stemmed from the poor management of the accounts and the failure of the managing agents to resolve issues with the accounts.

63. As to flat 7 the court fee and interest are not variable administration charges within Schedule 11 to the Commonhold and Leasehold Act 2001 and so are not within our jurisdiction.

As to legal fees claimed these may well be variable administration charges within our jurisdiction but the Respondent has failed to produce any supporting invoices or demands, let alone compliant demands. We find they are not payable.

As to the late payment fee and the administration charge there is no evidence before us that the Respondent has incurred these charges. It seems they are simply imposed by the managing agents to boost revenue. Even if otherwise payable there is no evidence before us as to how the charge has been arrived at, still less that it is reasonable in amount. Moreover the unit fees for management include a degree of debt recovery and arrears chasing services. Thus if the Respondent had incurred the costs in question then such costs would not, in our judgment, have been reasonably incurred.

For these reasons we find these variable administration charges are not payable.

64. As to flat 8 the same points arise and we find the sums claimed are not payable.

65. As to flat 9 Mr Rankohi conceded the charge was not payable.

66. As to flat 10 Mr Rankohi conceded that two of the charges were not payable. As to the remainder the same points as made in paragraph 63 apply and we find that they are not payable.

Costs and fees

67. The Applicants made an application pursuant of section 20C of the Act and an application for reimbursement of fees. The parties compromised and the Applicants withdrew their application for reimbursement of fees in return for the Respondent agreeing to consent to an order being made under section 20C of the Act. We have therefore made such an order by consent.

The next steps

68. This decision is to be taken as the substantive decision on the application and the time for any application for permission to appeal this decision shall be made pursuant to Rule 52.

69. As a consequence of this decision an adjustment will need to be made to the individual cash accounts of each Applicant and the Respondent. Such adjustment should simply be a matter of arithmetic and ought not to be controversial.

70. The parties are urged to be reasonable and realistic in agreeing the adjustments to the cash accounts. However in the event of any material dispute between the parties an application may be made to the Tribunal for that dispute to be determined. Any such application shall be made no later than **5pm Friday 27 September 2013.** The application shall set out the gist of the dispute and the rival contentions of the parties. It shall be copied to the opposite party at the same time as it is sent to the Tribunal. Upon receipt of such application further directions will be given as appropriate.

The law

71. Relevant law we have taken into account in arriving at our decisions is set out in the Appendix below.

Judge John Hewitt
8 August 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Note: Reasonableness: The application of the test:

The application of the test was helpfully explained by HHJ Karen Walden-Smith in *Havering LBC v Macdonald* [2012] UKUT 154 LC (17 May 2012) and may be summarised as follows:

1. It is by virtue of the provisions of section 27A of the Landlord and Tenant Act 1987 (inserted by the Commonhold and Leasehold Reform Act 2002) that an application may be made to the LVT for a determination whether a service charge is payable and, if it is, as to the amount which is payable.

2. As is consistent with other decisions as to what is meant by "reasonableness", in determining the reasonableness of a service charge the LVT has to take into account all relevant circumstances as they exist at the date of the hearing in a broad, common sense way giving weight as the LVT thinks right to the various factors in the situation in order to determine whether a charge is reasonable. The test is "whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem or matter. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable" per His Honour Judge Mole QC in *Regent Management v Jones* [2010] UKUT 369 (LC).

3. Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available: see *Yorkbrook Investments Ltd v Batten* (1986) 19 HLR 25 (as applied in *Schilling v Canary Riverside Development PTD Limited* LRX/26/2005 and *Regent Management Limited* (supra).

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.

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 Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(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 Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Commonhold and Leasehold Reform Act 2002

Schedule 11

Paragraph 1 sets out a definition of a 'variable administration charge'.
Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.
Paragraph 5 provides that any party to a lease of a dwelling may apply to the First-tier Tribunal (Property Chamber) 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.

No application 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.

A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
Paragraph 4(1) provides that a demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of the tenant in relation to administration charges.
Paragraph 4(2) provides that regulations may be made with regard to the form and content of such summaries.
Regulations have been made:

> The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007 No 1258).

The regulations set out the text of the summary of rights and obligations which must be typed or printed in at least 10 point and accompany every demand for the payment of an administration charge.

S/C Year	Head of Charge	Item	Sum Claimed	Tribunal Decision	Tribunal Comments
2006	Repairs & Maintenance	Auto Jet Invoice	£ 82.25	£ 82.25	Reasonably incurred and reasonbale in amount
	Cleaning	All	£ 413.00	£ -	No evidence that works carried out
	Management Fees	All	£ 848.00	£ 425.00	Adjusted to reflect level & quality of service provided
	Bank Interest	All	£ 75.00	£ -	No evidence that expense was incurred
2007	Repairs & Maintenance	Replacement Keys	£ 17.63	£ -	Not reasonably incurred
	Cleaning	All	£ 508.13	£ -	No evidence that works carried out
	Management Fees	All	£ 879.96	£ 450.00	Adjusted to reflect level & quality of service provided
	Reserve	General Reserve	£ 500.00	£ 500.00	Reasonable in amount
		Internnal Reserve	£ 220.00	£ 220.00	Reasonable in amount
		Risk Assessment	£ 272.00	£ 272.00	Reasonable in amount
	External Redecorations	All	£ 1,108.62	£ -	R conceded works were not carried out
2008	Cleaning	All	£ 584.20	£ -	No evidence that works carried out
	Repairs & Maintenance	Pest Control	£ 135.13		Initially (but wrongly) claimed in 2007 a/cs
	Management Fees	All	£ 900.77	£ 450.00	Adjusted to reflect level & quality of service provided
	Reserve	General Reserve	£ 500.00	£ 500.00	Reasonable in amount
		Internal Reserve	£ 200.00	£ 220.00	Reasonable in amount
		Risk Assessment	£ 272.00	£ 272.00	Reasonable in amount
	External Redecoration	All	£ 1,878.12	£ -	Not pursuaded the works were carried out
2009	General Repairs	Rubbish removal	£ 115.00	£ -	Rubbish was removed by lessees, not a contractor
		Digital upgrade	£ 51.75	£ 51.75	Reasonably incurred & reasonable in amount
	Cleaning	All	£ 458.83	£ -	No evidence that works carried out
	Management Fees	All	£ 912.46	£ 450.00	Adjusted to reflect level & quality of service provided
	Reserve	Reserve	£ 1,000.00	£ 1,000.00	Reasonable in amount
2010	General Repairs	Digital upgrade	£ 310.20	£ 310.20	Reasonably incurred & reasonable in amount
		Digital upgrade	£ 760.18	£ 760.18	Reasonably incurred & reasonable in amount
	Cleaning	All	£ 605.34	£ -	No evidence that works carried out
	Management Fees	All	£ 970.00	£ 450.00	Adjusted to reflect level & quality of service provided
	Health & Safety	H&S	£ 86.95	£ 86.95	Challenge withdrawn by the Applicants
	Reserve	Reserve	£ 1,000.00		Reasonable in amount
2011	Cleaning	All	£ 1,025.31	£ 300.00	Limited & occasional cleaning undertaken
	Management Fees	All	£ 1,020.00	£ 455.00	Adjusted to reflect level & quality of service provided
	Reserve	Reserve	£ 1,000.00	£ 1,000.00	Reasonable in amount
	Totals		**£ 18,710.83**	**£ 8,255.33**	