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

**Case Reference** : **MAN/00DB/LSC/2014/0105**

**Property** : **Apartment 8, Sandal Grange, Walton Court,  
Wakefield WF2 6AL**

**Applicant** : **Sandal Grange (Wakefield)  
Management Company Limited**

**Respondent** : **Mr Peter Tantram**

**Type of Application** : **Section 27A(1) Landlord and Tenant Act  
1985; Schedule 11, Paragraph 3  
Commonhold and Leasehold Reform Act  
2002**

**Tribunal Members** : **Mr Phillip Barber; Mr C Evans FRICS**

**Date of Decision** : **15 January 2015**

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**DECISION**

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1. The applicant issued proceedings in Wakefield County Court claiming arrears of service charges, administration charges and associated interest in the sum of £10,534.50 including court fees. The particulars of claim at pages 3 and 4 of the bundle set out the extent of the claim but it is claimed that Mr Tantram, the Respondent, has breached clauses 4.2, 4.21 and 4.4. of his lease over a period of years.
2. Mr Tantram defended that claim as set out in his defence at pages 15 through to 17 of the bundle. That defence makes it clear that Mr Tantram is disputing solely the costs of the service charge and administrative charges solely associated with the repairs and maintenance of the lift serving his flat (and three other flats). This was also confirmed at the directions hearing and at the commencement of the tribunal on the 15 January 2015.
3. On the 15 August 2014 Deputy District Judge Morrill transferred the claim to the First-tier Tribunal. The Order is not clear but it is assumed that the whole of the claim is transferred, save the issues which are outside the jurisdiction of the Tribunal.

#### The Facts

4. The facts can be simply set out as follows. They are not in dispute.
5. Mr Tantram purchased a long leasehold interest in flat 8, Sandal Grange, Wakefield WF2 6AL on the 19 January 2007 for a term of 999 years from the 1 June 2004. The premium was £300,000 and the ground rent was set initially at £250.
6. The lease is a three party-type lease. The agreement is between Shepherd Homes Limited as landlord (although they do not currently own the freehold – the parties were unsure of the current landlord, but that is not particularly relevant); Sandal Grange (Wakefield) Management Company Limited as management company and Mr Tantram as tenant. We did not see the document but Mr Tantram will almost certainly be a member of the Sandal Grange (Wakefield) Management Company Limited (hereinafter called “the Management Company”), having paid the share price, and could, if he so wished probably become a director of that company.
7. The Management Company has instructed Watson Property Management as managing agent. As we understand things, the Management Company is currently run by Watsons as they provide the Directors of the Company, no leaseholder having come forward to take on that task.
8. There is an up to date statement of account at page 1 of tab 6 of the bundle which shows that for almost the whole of the period from purchase of the lease

through to the date of the hearing Mr Tantram has been in arrears with his service charge. It is fair to say that at the start of his lease he appears to have been charged services for a period when he was not the leaseholder, but this was remedied shortly afterwards by a credit into his service charge account.

9. Between about the middle of 2007 through to December 2013, Mr Tantram made regular payments but the amounts he paid were not sufficient to cover the full service charge demands. Attached to the statement of account are examples of the statutory notices serviced by the Applicants setting out the summary of tenants' rights in relation to service charges and administration charges. This appears to be in order and in any event, Mr Tantram has not sought to raise any breach of the statutory requirements.
10. Mr Tantram has the benefit of a lift. The lift serves Mr Tantram's flat and two other flats: one more on his floor and a flat on the floor below. Unfortunately this lift has had significant problems over the years and the Management Company has been put to significant expense in its upkeep. The problems for Mr Tantram, and this is the nub of the issue, is that the Management Company has sought to charge Mr Tantram and the other two leaseholders the full cost of the repairs and maintenance of the lift. This has resulted in a considerable charge to his service charge account and perhaps to some extent has overwhelmed him as he has not really met the net service charge with the lift costs removed; which is something one might expect if he were challenging only this element.
11. Mr Tantram's argument, and it is one that we share, is that this is contrary to the terms of the lease and manifestly unfair.

#### The Lease

12. The lease contains the following interpretations in paragraph 1:

“Block”	means the building comprising flat numbers 1-12 and 14-25 Sandal Grange, Wakefield
“Common parts”	means all parts of the Development and the Block not intended to be included in the lease of any flat including any Service Media <i>used in common by an two or more flats</i> [our emphasis] including (though not by way of limitation) staircases, entrance halls and landings, and landscaped areas
“Retained Premises”	means those parts of the Block and Development which are more particularly described in the second schedule hereto and the maintenance of whereof is the

responsibility of the Management Company and to the costs of such maintenance the Tenant contributes as detailed below

“Service Charge Costs” means the monies actually expended or reserved for future expenditure by the Management Company at all times during the Term hereby granted in providing the Services

“Service Charge” means the total of the Service Charge Costs incurred by the Management Company in providing the Services

“Services” means the services set out in the Fifth Schedule hereto

“Tenant’s Proportion” means a fair and reasonable proportion of the Service Charge in any given Accounting Period (as such terms are defined in the Sixth Schedule hereto)

13. The second schedule lists the Retained Premises and includes, for example, the common parts (defined above as those parts used by 2 or more flats). The lift is accordingly a common part and thus part of the retained premises.
14. The fifth schedule sets out the services to be provided by the Management Company, including as one would expect, “....keeping the Retained Premises and every part thereof in good and substantial repair order and condition and renewing and replacing all worn and damaged parts thereto”. In fact this is what the Management Company has been doing in relation to the lift over the years. The invoices and schedules of work are contained in tab 2 of the bundle from page 56 through to about page 263 and the costs associated with the lift are significant.

#### The Interpretation of the Lease

15. The Management Company have interpreted the least to mean that only those who have the benefit of the lift are required to pay for its upkeep. In our view this is plainly wrong.
16. Accordingly the lift, as part of the common parts and therefore the retained premises is within the repairing covenant of the Management Company. The services to be provided by the Management Company are defined in the fifth schedule and include “keeping the retained premises and every part thereof in good and substantial repair and order...”. The Management Company is therefore responsible for keeping the lift in good and substantial repair. The service charge cost is the total expended by the Management Company in carrying out the services (and any reserves for future expenditure). The cost of keeping the lift in good and substantial repair is part of the service charge cost. The service charge is therefore all the costs incurred by the Management

Company (including the costs associated with the lift). The service charge is therefore an amalgam of all costs and the tenant's proportion is a "fair and reasonable proportion" of all those costs. A proportion is a means of taking the whole sum and dividing it up by reference to some equitable divisor. We understand that the Management Company generally have reference to the floor space, which seems to us to be a fair and reasonable means of establishing a tenant's proportion of the whole.

17. In our view, singling out three flats to cover the cost of the lift is not fair and it is not reasonable. If that were the intention of the drafter of the leases, then in our view it would need to be expressed in such terms. Clearly this could not have been the intention as we doubt very much whether the developer would have been able to sell those flats. It would have been unlikely that a willing buyer might have been found prepared to take the risks and burden associated with the upkeep of a lift.
18. Accordingly in our view the Management Company is wrong in charging 39.68% of the costs associated with the lift to Mr Tantram and in our view he is liable for only 7.27% of the whole of the service charge costs.

The Outcome in relation to the section 27A application

19. We propose to give a determination to that effect. We are not in a position to recalculate Mr Tantram's liability ourselves and what we propose is that the Applicant should now re-calculate Mr Tantram's service charge liability by reference to this decision and reasons.
20. The balance of Mr Tantram's proportion of the service charge is, of course, reasonable and payable.

The Issue of the Administration Charges

21. A number of administration charges are claimed arising out of the court proceedings brought by Sandal Grange Management Company against Mr Tantram under the terms of his lease.
22. The outcome of the calculation as to the amount of service charge costs will have a direct impact upon the reasonableness and payability of the administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002. What we propose to do therefore is make a full determination on the issue of the administration charges following the recalculation of the service charge payable arising out of this determination.
23. Accordingly we invite the applicant, Sandal Grange Management Company to provide us with a schedule of service charges payable since the commencement of Mr Tantram's lease re-calculated using 7.27% insofar as it

relates to his share of the costs of the lease. We will then be in a position to make a determination on the issue of the administration charges.

24. The recalculated schedule should be provided to the Manchester office of the First-tier Tribunal, Residential Property Chamber by the end of March at the latest.