1414

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CG/LIS/2015/0004**
Property	:	**91 Callow Place, Sheffield, S14 1PL**
Applicant	:	**Sheffield City Council**
Representative	:	**Mr Justin Bates, Barrister**
Respondent	:	**Mrs Shirley Holme**
Representative	:	**Mr Tim Wheeler**
Type of Application	:	**Service charges, Section 27A of the Landlord and Tenant Act 1985.**
Tribunal Members	:	**Judge C. P. Tonge, LLB, BA.** **Mr M. C. W. Bennett, BSc, MRICS.** **Mrs M. R. Oates, BA**
Date of decision	:	**5 February 2016**

DECISION

The background to the application

1. This case comes before the Tribunal by way of an order of District Judge Babbington, sitting at Sheffield County Court, who on 22 June 2015, transferred this case to the Tribunal to determine the questions of sufficiency and liability to pay the service charges involved in the case.

2. The Applicant freeholder is Sheffield City Council, represented by Justin Bates, a Barrister.

3. The Respondent is Mrs Shirley Holmes, who holds the remainder of a lease for 125 years, dated 25 October 2004, on 91 Callow Place, Sheffield, S14 1PL "the property", purchased under the right to buy scheme.

4. The Respondent is represented by Tim Wheeler who is qualified as a solicitor, but has been struck off the rolls.

5. The "tower block of flats" is a purpose built block of 56 flats that is situated within a complex of six blocks of a similar nature.

6. Directions were issued on 10 August 2015. As a result of these Directions, a paginated joint hearing bundle has been prepared that is 329 pages in length. In addition there is a separate bundle of legislation and relevant authorities. The Tribunal gave leave for further documents to be served during the hearing.

7. The application relates to two separate items of major works carried out at the "tower block of flats" firstly, to replace the lifts, secondly, during work to clad the exterior of the "tower block of flats" associated work to the roof and to replace the windows of "the property". The application also relates to service charges for the upkeep of "tower block of flats" for service charge years ending 30 September 2011, 30 September 2012 and 30 September 2013.

8. It is common ground that some of these service charges have been paid, although there is a dispute as to exactly how much of them have been paid. The Tribunal is asked to consider the sums that the Applicant suggests have not as yet been paid:

• Major "cladding" works, invoice 849839, 3 March 2011	£3497
• Major lift works, invoice 935720, 5 April 2012	£254.78
• Service charge year ending, 30 September 2011	£201.06
• Service charge year ending, 30 September 2012	£133.50
• Service charge year ending, 30 September 2013	£179.05
• Total	£4265.39

9. The Tribunal inspected the "block of flats" at 10 am on 19 January 2016 with a hearing after the inspection. The hearing taking place at the Employment Tribunal Building, Sheffield. The hearing was adjourned to 28 January 2016, for further evidence to be called. The case was further adjourned to 5 February 2016, when the Tribunal sat to determine the issues raised in the case, without the parties being present.

The inspection

10. The Tribunal inspected the "tower block of flats" at 10 am on 19 January 2016. Mr Andrew Auckland, a member of the Applicant's Leasehold Team, was present on behalf of the Applicant. The Respondent was present, with her representative Mr Tim Wheeler and Mr Stuart Lapp, her friend and a witness in the case.

11. The "tower block of flats" is situated in a complex of similar buildings all of which have had their exteriors clad with a modern, composite insulating material. There is a boiler house providing common heating to all six blocks of flats. The blocks of flats have parking areas, surrounded by grassed areas. The Tribunal noted that some paving slabs near to the "tower block of flats" are cracked. There is an external area into which rubbish that is deposited down rubbish shoots situated in the balcony areas of each flat, would fall down and land in rubbish bins.

12. The "tower block of flats" built in 1964 is 14 stories high, with four flats on each level. The ground floor has a common entrance door controlled by a door entry system. There is then an area covered by a proprietary non-slip floor covering that the Respondent suggested was shoddy. The Tribunal thought that the floor covering was generally satisfactory.

13. Still dealing with the ground floor, there is an area for the tenants to store rubbish, a locked office, a locked care takers room, a locked meeting or community room that is set out with tables and chairs and has a kitchen, available for tenants to use at a charge. There is a washing machine and clothes dryer that are available for use by the tenants.

14. The centre of the "tower block of flats" has a common lobby area, with two lifts, one serves odd numbered floors, the other serves even numbered floors. There is a similar central lobby on each floor. These lobby areas are tiled. There are fire doors on opposite sides of each lobby, each door leading to a concrete flight of steps providing two fire exits that are separate to the lifts. There is a fire alarm on the ground floor. The common areas on the ground floor are heated, but the other common parts on the remaining floors are not. Dry risers for the use of the fire brigade are fitted.

15. "The property" is a two bedroomed flat situated on the third floor of the "tower block of flats". The Respondent has covered over the rubbish shoot that is no longer visible in the balcony area. The balcony has three newly fitted, double glazed, opening windows that commence at waist height. There are newly fitted safety glass fixed panels underneath. The balcony joins onto the kitchen area that once had exterior windows, as they would in the past have faced out onto a balcony without windows. The kitchen windows have not been newly fitted.

16. The sitting room and both bedrooms have newly fitted windows. The Respondent made it very clear that she was of the opinion that the replacement windows had not been fitted properly. The Tribunal observed high quality windows that looked well fitted and finished, both internally and externally. The "tower block of flats" is in good condition, well maintained and reasonably clean.

THE LAW

Landlord and Tenant Act 1985 "the Act"

Section 18, meaning of service charge and relevant costs.

Briefly this defines a service charge and associated costs as the variable cost of providing the service.

Section 27A, Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

Section 19, Limitation of service charges: reasonableness.

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

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

(b) where they are incurred on the 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.

Relevant provisions of the lease

17. A copy of the lease to "the property" is contained within the bundle (bundle, page 138 to 159). It is a lease for "the property" for 125 years, commencing 25 October 2004.

18. The lease permits service charges to be demanded in two different ways, either on incurred costs or on estimated costs, clause 3 (29) (bundle, page 142).

19. The second method is for the freeholder to estimate the service charges that are going to have to be demanded in the coming year, fairly apportion them to the flat in question and demand the estimated figure in advance of the cost being incurred. This method requires a balancing exercise at the end of the year. There are built in protections, but they are not relevant because the Applicant has chosen not to use this method.

20. The first method is far more straightforward. The freeholder can demand a fair proportion of the cost of providing the service after it has been provided. This is the method that the Applicant has chosen to use.

21. Part III, section II, paragraph 9, of the lease provides that time is not of the essence with regard to the freeholder's observance of the lease (bundle, page 152).

22. A ten per centum administration charge is provided for in clause 6 (vi) (bundle, page 142).

23. Part III of the lease contains the service charge provisions, section I (bundle, page 151), provides for the usual charges to be included as "a fair proportion to be determined by the City Treasurer or other duly authorised officer of the Council...of all outgoings incurred ...in respect of or for the benefit of the building."

Summary of the written case on behalf of the Applicant

24. There follows a brief summary of the relevant parts of the Applicant's written case.

25. The Applicant has chosen to demand payment of service charges after the cost is known. This is a far more simple method of collecting service charges. It is also cheaper and permits the tenant to pay the service charge much later than would otherwise be the case.

26. Every service charge demand is accompanied by the required "tenants' summary of rights and obligations" form as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (S. I. 1257).

27. All service charges are fairly apportioned, but the apportionment calculation in relation to two of the areas of service charges involve taking account of costs that are external to the "tower block of flats".

28. Some concessions are made in relation to specific items of expenditure that are challenged in the Scott Schedule.

29. It was necessary to clad the exterior of the flats to provide thermal insulation up to modern standards and better protection from the weather. This required the replacement of windows, which in any event were generally old and in need of replacement. Work to the roof was carried out at the same time, all works being done under a long term agreement with "Lovell". The service charge demanded from the Applicant was capped to align with figures provided in a statement made to comply with section 125 of the Housing Act 1985.

30. It was necessary to replace the lifts in the "tower block of flats". This work was carried out under a long term agreement with "Kier".

31. Consultation was carried out with the long leaseholder tenants as required when dealing with work under long term agreements.

32. The Respondent buying "the property" on 25 October 2004, under the right to buy scheme, has been provided with a notice pursuant to section 125 of the Housing Act 1985 (bundle, page 171, 172, 192 and 193). The "initial period" during which repairs are either capped or not chargeable at all therefore ended on 31 March 2010. The notice requires a contribution to widow frames of £2,880, roofing works of £417 and does not mention the replacement of lifts.

Summary of the written case on behalf of the Respondent

33. There follows a brief summary of the relevant parts of the Respondent's written case.

34. The service charge demands have been accompanied by a "tenants' summary of rights and obligations" form, but those forms have not been in the correct format as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (S. I. 1257). The Respondent is therefore entitled to withhold payment until the correct forms have been served.

35. The Respondent suggests that service charges have not been demanded in compliance with the provisions of the lease relating to estimating costs and demanding them in advance of incurring the cost and further breaches related to this method of demanding service charges. Thereby, the Respondent submits that the Applicant is in breach of these terms of the lease and therefore may not be entitled to charge service charges.

36. The Respondent points out that where major works have been completed the resulting service charge demands are in breach of the terms of the lease because under the terms of the lease there can only be one effective service charge demand per year, any later demand should subsume into it the details of the earlier demand. Thereby, the Respondent submits that the Applicant is in breach of these terms of the lease and therefore may not be entitled to charge service charges relating to the major works.

37. In relation to both major works, the Respondent submits that the consultation requirements pursuant to section 20 of "the Act" have not been complied with and that therefore the maximum contribution that can be demanded from the Respondent is £250 for each major work. The Respondent contends that Janet Sharpe, employed by the Applicant as the Director of Housing, has admitted a failure to consult properly and notes of a conversation are produced in support (bundle, page 266 and 267).

38. In relation to the lift replacement service charge, the Respondent states that she has paid the remaining £254.78.

39. In relation to the window replacement associated with the cladding work, the Respondent states that the work was done to a very poor standard and produces photographs to support her case.

40. In relation to the service charges for the day to day running of the "tower block of flats" the Respondent states that in her view it is entirely wrong to look at electricity costs or tower block costs including any building other than the "tower block of flats" and then apportion them. By example, the Applicant should have an electricity meter for the common electricity used in her "tower block of flats", only then could this be fairly apportioned between the flats in the "tower block of flats".

The hearing

41. The hearing commenced at 11.45 am on 19 January 2016, at the Sheffield Employment Tribunal building. The Respondent and her representative were present throughout the first two days of the hearing. The Applicant's main witness and representative, Mr Nathan Robinson, Leasehold Service Manager and the Barrister, Mr Justin Bates, were also present throughout the first two days of the hearing. On the first day only Mr Dean, a local authority solicitor, was also present. Witnesses were called as appropriate during the case.

42. The Applicant had informed the Tribunal in advance of the hearing that they would object to Mr Wheeler acting as the representative of the Respondent. This was dealt with as a preliminary matter and the Tribunal made it clear that it was willing to deal with this issue in a more private setting, with only Mr Bates and the Respondent present, if Mr Wheeler preferred that. In fact the Applicant did not object to Mr Wheeler, but simply wished to make sure that the Tribunal knew that Mr Wheeler had been struck off the roll of solicitors. The Respondent chose to continue to be represented by Mr Wheeler.

43. Having read the case papers it was obvious to the Tribunal that additional evidence would have to be put before the Tribunal to deal with the questions as to what the long term contracts with "Kier" and "Lovell" were, when they were made and how it was that the Applicant came to use "Kier" to replace the lifts and "Lovell" to deal with the cladding, windows and roof. The Tribunal gave a Direction at the commencement of the hearing that the Applicant produce evidence to deal with these issues.

44. In compliance with this additional Direction, on the second day of the hearing, the Applicant produced copies of various documents that the Tribunal will deal with in more detail later in the determination of these issues. The Tribunal admits all the documents into evidence and notes that they should have formed part of the hearing bundle.

45. Where the Tribunal records in this Decision a reference to oral evidence given at the hearing, it only records a summary of evidence that is relevant to the Tribunals determination of the issues. Written statements were all permitted to stand as evidence of their content.

Oral evidence on behalf of the Applicant

46. The Applicant called Mr Nathan Robinson, the Applicant's Leasehold services Manager, to give evidence (bundle, pages 160 to 213 and 278 to 320).

47. Mr Robinson explained that it was the view of the Applicant that the lease provides two different ways in which to charge service charges. One way is to charge in advance on estimates of expenditure, so that the freeholder can collect the money to be spent before it is spent. This would then be followed by a balancing calculation at the end of the year. The Applicant does not use this method.

48. The second method is to charge service charges on the actual cost incurred. This has benefits to both parties to the lease. It reduces administration in having to estimate and then balance the service charges. This results in lower management costs, which would otherwise have to form part of the service charge. In addition, it means that the Respondent is not required to pay until a much later date, in effect being similar to a year of interest free credit. When the service charge is demanded the Applicant then allows payment to be spread over a further 12 month period.

49. The Applicant has chosen to charge service charges for the day to day running of the "tower block of flats" and for major works at the "tower block of flats" on the actual cost incurred.

50. Mr Robinson stated that with every service charge demand the system used by the Applicant automatically prints a copy of the "tenants' summary of rights and obligations" form (bundle pages 295 to 297). There is a quality control check in place to ensure that the notice that has been printed is sent out with the service charge demand.

51. Mr Robinson explained that general day to day repairs to the "tower block of flats" are carried out by Kier Sheffield LLP "Kier". There is a long term agreement with "Kier" made in April 2003 and the lift replacement was also carried out under this contract.

52. Mr Robinson explained that the communal electricity charge is calculated on a city wide average. The total cost of communal lighting across the city is divided amongst the number of properties connected to it. This has previously been considered and approved of by a Leasehold Valuation Tribunal Decision, 20 July 2011, Sheffield City Council v Geoffrey Bingham [the Tribunal members of that case including a member of this Tribunal, Mr Bennett]. (Legislation and authorities bundle at tab 7).

53. Mr Robinson explained that the tower block charges cover the expenses that are specific to tower blocks, which amongst other things include, emergency lighting, fire alarms, firefighting equipment and the like. These are calculated taking the charges for tower blocks across the city and dividing them by the number of flats in these tower blocks.

54. Mr Robinson dealt with certain concessions that he is authorised to make on behalf of the Applicant. As a result of receiving the Respondent's statement of case and Scott Schedule he has been through the complaints raised by the Respondent in relation to specific charges and where appropriate makes the following concessions:

- Garage block, guttering and fall pipe repairs (bundle, page 288 at paragraph 60) (Scott Schedule, page 256), amount to be credited to the service charge account is £7.61
- Lighting repair to the exterior boiler house(bundle, page 288 at paragraph 61) (Scott Schedule, page 256), amount to be credited to the service charge account is £ 0.64
- Paving slabs damaged by scaffolding(bundle, page 289 at paragraph 62) (Scott Schedule, page 256), amount to be credited to the service charge account is £11.51
- Repairs to the boiler house (bundle, page 292 at paragraph 77) (Scott Schedule, page 261). The Applicant had added the sum of £19.14 to the Respondent's service charge account, but Mr Robinson concedes that this should only have been £7.47. The amount to be credited to the service charge account is £11.67.

55. Mr Robinson stated that he had carried out a careful analysis of the remainder of the specific complaints made and he disagreed with the Respondent, no further credits were due to her service charge account. He dealt with each complaint.

56. Mr Robison stated that he checked again with the Applicant's financial records and there was nothing to support the Respondents suggestion that she had paid the final £254.78 towards the lift replacement major works. He was shown a "Final Notice" dated 19 July 2013 which warned that the Applicant might refer the debt to an external debt collection agency. He was asked if this had been done. Mr Robinson was given time and after further investigations had been carried out he confirmed that the debt had not been so referred. The money is still owed.

57. Mr Robinson stated that the Applicant did not receive any benefit from the scrap metal value of the replaced lift cars and cables.

58. Mr Robinson stated that the "tower block of flats" had not had a window replacement project previous to the one forming part of this case and that generally the windows were old and need of replacement.

59. Mr Robinson was referred to the Respondent's photographs (bundle, page 234 to 251). He made the point that it was obvious that these were taken during the work being done and that he was not aware of any other complaints.

60. It was necessary to interpose the witness Janet Sharpe, who had been given permission to attend the Tribunal at 2pm on the first day of the hearing. She is the Applicant's Director of Council Housing and Neighbourhood Services and is a witness for the Applicant (bundle, page 321 to 323).

61. Ms Sharpe stated that the cladding, roof and window major work at the "tower block of flats" had been completed by the Lovell Partnership Limited "Lovell". The Applicant had appointed them in April 2005 as one of five contractors in a strategic partnership agreement, to undertake part of the work required in a major overhaul of improvements to over 39,000 homes in the city. This taking about 10 years to complete. Part of the funding for some of this work was provided by the Government under the "Decent Homes" funding scheme.

62. Ms Sharpe stated that the decision had been taken to clad the outside of all 25 tower blocks owned and let by the city council, because of the better insulation and weather proofing that this would provide. As part of that the exterior windows had to be replaced, the windows being fitted into both the new cladding and the existing window openings.

63. Ms Sharpe confirmed that she had attended a meeting with the Respondent and the Respondent's friend Mr Lapp on 4 March 2010, to discuss the cladding, window and roof project. Ms Sharpe agreed that Mr Lapp had taken notes at the meeting and that she had signed them to confirm that they were an accurate note of what was said (bundle, page 266 and 277).

64. Ms Sharpe explained that when she referred to consultation in those meeting notes, she was not referring to consultation as required by any Act of Parliament, she was referring to consultation in the wider sense of talking to tenants and attempting to resolve their problems. By consulting with the Respondent on that day they were able to reach a reasonable compromise, so the work could go ahead, with both sides satisfied. Mrs Holmes being provided with different windows than were provided to everyone else.

65. Mr Robinson was recalled to continue being cross-examined on behalf of the Respondent.

66. Mr Robinson was asked about consultation as required by section 20 of "the Act" and Mr Robinson stated that the major works done in this case were both carried out under long term agreements. The long term agreement with "Lovell" for the cladding, windows and roof. The long term agreement with "Kier" for the lift. He did not know the exact dates of either agreement at the moment, but consultation had been carried out either under schedule II or schedule III of the consultation requirements. (The Service Charges (Consultation Requirements) (England) Regulations 2003 (S. I. 1987) (Legislation and authorities bundle, tab 3). Various letters within the bundle were referred to.

67. Mr Robison stated that the "tower block of flats" had been built in 1964 and therefore the windows were very old and were ready for replacement.

68. It was pointed out to Mr Robinson that the service charge demand (bundle, page 207) related to major work that straddled two service charge years. Mr Robinson agreed and said that this did not matter, this was the period during which the work was done and the demand was made when the work was complete.

69. Mr Robinson was asked about £387.33, put in issue in the Scott Schedule (bundle, page 256). Mr Robison stated that he had investigated this expense. It related to a leak in a water pipe in the lift shaft. It was not something that could be claimed against "Kier" who had done work in the shaft. He had also checked the Respondent's claim that this work had been done and charged for twice and this was not correct. This expense had only been included in the service charge calculation once and it was properly chargeable.

70. Before the Tribunal adjourned at the end of the first day of the hearing the Respondent was permitted to call her witness Mr Stuart Lapp, out of turn, to avoid his having to attend the second day of the hearing. Mr Lapp (bundle, page 263) confirmed his presence at the meeting with Janet Sharpe and that he had taken notes of that meeting (bundle, page 266 and 267). Mr Lapp stated that Janet Sharpe had said that the Council had not properly consulted about the cladding works. He agreed that Ms Sharpe had not mentioned section 20 of "the Act".

71. The second day of the hearing took place at the same venue on 28 January 2016 and on behalf of the Applicant, Mr Robinson was recalled to continue his evidence.

72. On behalf of the Applicant, the documents referred to in the additional Direction (paragraph 41, above) were produced.

73. In relation to the "Kier" contract there had been an advertisement in the Official Journal for a contactor to be appointed to undertake repairs and maintenance on behalf of the Council, responses were required by 27 September 2001. This process was discussed in a Council Cabinet meeting on 23 October 2002 when a resolution was made to appoint "Kier" for a period of 10 years. The appointment was made via a deed, executed on 3 April 2003 and it is described as a Term Partnering Contract. Included under the heading "Lift Maintenance" is an agreement to maintain 200 passenger lifts, including, refurbishing, upgrading and major component replacement. There was reference within these documents to an earlier agreement with "Kier" of a similar nature and oral evidence was given that the earlier agreement was subsumed into this agreement, with the lift replacement work being done under these contracts. The service charge contribution sought in this regard is not limited by section 125 of the Housing Act 1985, because the work was done outside the relevant period.

74. On behalf of the Respondent an application was made for a further Direction that the Applicant be required to produce the earlier contract with "Kier", referred to above. Mr Bates informed the Tribunal that this would require a further adjournment of the hearing, but did not seek to make an application to adjourn. The Tribunal decided that the case will be determined on the evidence as it now stands and refused to make the Direction.

75. In relation to the contact with "Lovell", a copy of a deed executed on 14 April 2005 was produced with "Lovell" being appointed as a partnering contractor to undertake works in connection with the Housing and Neighbourhood Investment Project- Contact 4. Oral evidence was given that the cladding, roof and window work was done under this contract.

76. "Lovell" is one of five companies appointed in this scheme of major improvement works carried out across the city. Again this appointment was after advertisement in the Official Journal. A summary of the content of volume two of this agreement was given. It covers all major works that were done to the "tower block of flats" with regard to cladding, roof and windows in a design and build process. The cladding is not included in calculating the service charges payable by the Respondent and the roof and windows are limited to the amount set in the notice under section 125 of the Housing Act 1985.

77. It was put to Mr Robinson that the only reason that the windows were replaced at the "tower block of flats" is that they had to be replaced because of the cladding work. Mr Robison denied this, generally, the windows required replacement because they were old and this was an opportunity to do deal with both improvements at the same time.

78. Garry Lund (bundle, page 324 to 326) was called to give evidence on behalf of the Applicant. He was the project manager of the cladding, roof and window works carried out in 2009 at the "tower block of flats".

79. He confirmed that the windows at the "tower block of flats" prior to the major works were generally single glazed with wood or metal frames and were overdue for replacement.

80. He refuted the suggestion that the window fitting had been "bodged". He said that the work was to a high standard, but because of the way the cladding fitted externally to the existing wall it was necessary for the new windows to be slightly smaller than the replaced windows otherwise the cladding would be visible through the windows when looking out. It was therefore necessary to use infill to make the gaps good on the inside of the windows. The photographs (bundle, page 234 to 251) were taken during this process and show the work being done properly.

Oral evidence on behalf of the Respondent

81. The Respondent gave evidence (bundle, page 221 to 262).

82. The Respondent dealt with cleaning at the "tower block of flats" (Scott Schedule, bundle, page 260). She pointed out that the cleaners had told her that they only provide one thorough cleaning on the Monday of each week and that this takes three hours. On Tuesday, Wednesday, Thursday and Friday, the cleaners only clean the lobbies. When they clean floor to floor, they do so with cold water and do not change it. They do not have enough time to clean thoroughly, having to divide their time between six tower blocks.

83. It was put to the Respondent that she is charged £4.86 per week towards the cost of the cleaning service and that this was good value for money. The Respondent did not agree.

84. In relation to the cladding and window works, the Respondent said that there are problems with infill strips falling down. (Mr Lund indicated that this in hand, "Lovell" have been instructed to deal with it.)

85. In relation to the conversation with Ms Sharpe, the Respondent agreed that the words "section 20 consultation" had not been said during the meeting. However, the Respondent stated that that was what she, the Respondent, was talking about and she had thought that Ms Sharpe was also talking about that.

86. The Respondent stated that she had paid the £254.78 that the Applicant contends is still owed towards the lift replacement. She received a letter indicating that a debt collection agency had been appointed to recover the debt and she had gone to the post office to pay the debt. This had been referred to on the first day of the hearing when the Tribunal had asked the Respondent to produce any supporting evidence that she has to this effect. The Respondent was not able to produce the letter that she received, the post office receipt that she had been given, or any bank records. The Respondent stated that she might have paid in cash.

87. Closing speeches were given. In the Closing speech on behalf of the Respondent, Mr Wheeler submitted that the Respondent is entitled to withhold payment of the service charges in this case because the "tenants' summary of rights and obligations" forms have not been in the correct format, the paragraph numbering (1) to (12) have been omitted and these are required by the statutory instrument, already referred to above.

88. The hearing was further adjourned for the Tribunal to determine the issues in the case, in private session. Deliberations to take place on 5 February 2016.

The deliberations

89. The Tribunal first considers the issue as to whether or not the Applicant is demanding service charges in accordance with the terms of the lease.

90. The Tribunal notes that the lease clearly requires the Applicant to choose between charging for incurred costs or estimated costs. The Applicant has chosen to use the simple method of charging for costs that have already been incurred. The Tribunal notes that this is highly advantageous to the Respondent. It keeps management costs lower than they would otherwise be, it results in a considerable delay in the service charge demand being made and the Applicant then permits payment over a 12 month period. The Tribunal approves of this method of calculating and demanding service charges, they are compliant with the terms of the lease.

91. The Tribunal is satisfied that the Respondent did receive a "tenants' summary of rights and obligations" form with each and every demand for payment of service charges. The Tribunal has compared the specimen document that the Applicant uses (bundle, page 295 to 297) with the specimen form as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (S. I. 1257).

92. The Tribunal agrees with the Respondent that the numbering for the paragraphs (1) to (12) has been missed out of the form being used by the Applicant. However, the content of the two documents is otherwise exactly the same. As such the tenant is being provided with all of the information that is required by the statutory instrument. The Tribunal decides that the Applicant has complied with the requirements of this statutory instrument, to decide otherwise would be breach of the Tribunals overriding objective to be fair and just, Rule 3 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (S. I. 2013/1169.

93. The Tribunal considers next the major works to install the new lifts at the "tower block of flats". This work was done under the terms of a contract executed by deed on 3 April 2003. At that stage the Respondent was a council tenant, she did not purchase the long lease on "the property" pursuant to the right to buy process until 25 October 2004. The "initial period" during which repairs are either capped or not chargeable at all therefore ended on 31 March 2010.

94. The work was completed during 2012, which is outside the "initial period" and therefore the section 125 Housing Act 1985 notice gives no protection to the Respondent.

95. This is work done by "Kier" under a long term agreement that was made before 31 October 2003, on which date the Service Charges (Consultation Requirements)(England) Regulations 2003 (S. I. 2003/1987) came into force. As a result this major work is caught by Regulation 7 (3) b and consultation is required with long leaseholders under Schedule 3 of the Regulations. The Tribunal decides that the "Notice Of Intention To Carry Out Work", dated 15 June 2011,(bundle, page 179 to 181) is sufficient to comply with these Regulations. Consultation as required did take place and the sum demanded by service charge is payable.

96. The Tribunal then considers the major work done by "Lovell", cladding, roof and windows. This work was carried out between 1 March 2010 and 28 February 2011, payment of service charge contribution demanded, 3 March 2011. This work commenced during the "initial period" covered by the notice served pursuant to section 125 Housing Act 1985. The Applicant therefore limits the contribution that can be demanded from the Respondent to £3,497 as permitted by that notice.

97. It is clear that the Respondent did not want this work to take place, the Tribunal determines that it was reasonable for the Applicant to have the work done. The Tribunal also determines that when Ms Janet Sharpe met The Respondent and spoke about consultation she meant consultation in the wider sense of the word and not consultation under "the Act" and subordinate Regulations.

98. This was work done under a qualifying long term agreement and consultation is required in compliance with Schedule 2 of the Service Charges (Consultation Requirements)(England) Regulations 2003 (S. I. 2003/1987). The Tribunal decides that the "Notice Of Intention To Carry Out Work", dated 24 July 2009, (bundle, page 191 and 211) is sufficient to comply with these Regulations. Consultation as required did take place and the sum demanded by service charge is payable.

99. The Tribunal now considers the common electricity charges. The "tower block of flats" does not have its own electricity meter, no doubt this is because when it was built it was expected that it would be occupied by council tenants. The right to buy legislation has resulted in the Respondent being able to buy "the property". Common electricity is calculated city wide and then apportioned by dividing the cost by the number of homes using the common electricity.

100. The Tribunal notes that the lease provides for a fair proportion to be determined of service charges. This appears to be a good way of determining such a proportion. The lease also provides for outgoings incurred in respect of or for the benefit of the building. The Tribunal determines that these charges are compliant with the lease. The Tribunal agrees with the earlier Decision of a differently constituted Tribunal in the case of, Sheffield City Council v Geoffrey Bingham, 20 July 2011.

101. The Tribunal now considers the tower block charges that are dealt with in a similar way, taking the costs that are special to tower blocks across the city and dividing them amongst the number of flats. Again the Tribunal decides that this compliant with the lease.

102. The cost of cleaning is challenged. The "tower block of flats" was reasonably clean when the Tribunal inspected it and the Tribunal finds the very low charge for cleaning to be reasonable.

103. The Administration Charge and Management charges are challenged, but the Tribunal finds these to be accordance with the provisions of the lease and being charged at a reasonable low level.

104. The Tribunal now deals with the remaining issues on the Scott Schedule.

105. First, service charge year 1 October 2010 to 30 September 2011 (bundle, page 256) (the two entries on page 255 have already been dealt with in this Decision). The top box complains that general day to day repairs have increased by 700% from the prior year. That kind of argument is of no use when the service charge is for actual expenditure. In the prior year the Applicant had to spend money that equates to an apportioned cost of £7.44, whereas in the present year the Applicant had to spend money that equates to an apportioned cost £52.07. This is reasonable expenditure for a tower block of 14 stories.

106. The next four boxes have been dealt with by the Applicant conceding that credits should be made to the Respondents service charge account. The Tribunal agrees with this and will deal with them in the Decision.

107. The sixth box deals with £387.33, referring to a leaking pipe in a lift shaft. The Tribunal accepts the evidence of Mr Robinson that this has only been included in the service charge calculations once and that it could not be charged to "Kier" under any form of warranty. The charge is reasonable.

108. The seventh box complains that the floor covering in the entrance to the "tower block of flats" is shoddy. It cost £967.20. The Tribunal gave this mat a thorough inspection at the request of the Respondent. The Tribunal thought that the floor covering was generally satisfactory and decides that the cost of the matting to cover the large area that is covered is reasonable.

109. The four entries on the Scott Schedule (bundle, page 257) have already been dealt with in this Decision.

110. Service charge year 1 October 2011 to 30 September 2012. The two entries on page 258 have already been dealt with in this Decision.

111. Scott Schedule (bundle, page 259) the first boxes are all numbered 3 and are dealt with together. Mr Robinson states that this had already been dealt with by the Applicant allowing a credit to the service charge account, before the Claim was made in the County Court. This is confirmed by a letter (bundle, page 315). The Tribunal has checked the Particulars of Claim and the sum of £133.50, there stated, confirms that the credit had already been made at this stage. The Tribunal is satisfied that this error had already been dealt with before the Claim was made in the County Court.

112. Item 4 (bundle, page 259) £84.28 for lift maintenance is challenged on the basis that the lift has only recently been installed. The Tribunal accepts that this is work done under a maintenance agreement and is nothing to with the warranty on the lift. This is payable and reasonable.

113. The remainder of this page and the next page deals with issues that have already been decided.

114. Service charge year 1 October 2012 to 30 September 2013. The first two entries on page 261 have already been dealt with in this Decision.

115. Box three, page 261 has been dealt with by Mr Robison making a concession, with which the Tribunal agrees.

116. The Tribunal refers to paragraph 86 of this Decision in which evidence is recorded relating to the debt of £254.78 (lift replacement major works). The Tribunal accepts the evidence of Mr Robinson on this issue. This amount has not been paid.

117. The whole of the remainder of the Scott Schedule has already been dealt with in this Decision.

The Decision

118. The County Court Claim is in the sum of £4265.39.

119. The Tribunal decides that the following amounts are not payable by the Respondent as part of this service charge debt.

- Garage block, guttering and fall pipe repairs (bundle, page 288 at paragraph 60) amount to be credited to the service charge account £7.61.
- Lighting repair to the exterior boiler house (bundle, page 288 at paragraph 61) amount to be credited to the service charge account £0.64.
- Paving slabs damaged by scaffolding (bundle, page 289 at paragraph 62) amount to be credited to the service charge account £11.51.
- Repairs to the boiler house (bundle, page 292 at paragraph 77) amount to be credited to the service charge account £11.67.

120. That is a total of £31.43 that must be deducted from the value of the County Court Claim of £4265.39. That makes £4,233.96 that is chargeable as a service charge and is reasonable.

121. This case should now be transferred back to the County Court.