12579

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AL/LSC/2017/0204**
Property	:	**73a, Plumstead Common Road, Woolwich, London, SE18 3AT**
Applicant	:	**Mr M Bawa**
Representative	:	**In Person**
Respondent	:	**South London Ground Rents Limited**
Representative	:	**Mr Bland of Pier Property Management**
Type of applications	:	**Section 27A Landlord and Tenant Act 1985 - determination of the reasonableness and payability of service charges; Section 35 Landlord and Tenant Act 1987 – variation of lease.**
Tribunal Members	:	**Mrs H Bowers BSc (Econ) MSc MRICS** **Mrs H Gyselynck BSc MRICs** **Mr M Taylor FRICS**
Date and venue of Consideration	:	**14 November 2017** **10, Alfred Place, London, WC1E 7LR**
Date of Decision	:	**3 January 2018**

DECISION

For the reasons given below, the Tribunal finds as follows:

- **The following service charges are payable by the Applicant:**
  - **2015/6 – £553.50**
  - **2016/7 – £895.00**
  - **2017/8 – £1,357.00**
- **The Tribunal makes no order under section 20C in relation to the applications.**
- **The Tribunal makes no order under Schedule 11, paragraph 5A to extinguish the Applicants' liability to pay administration charge in respect of litigation costs.**

REASONS

Introduction:

1.) The Applicant, Mr M Bawa, made an application, dated 12 May 2017, under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) for a determination of the reasonableness of service charges for the service charge years 2013/2014, 2014/2015, 2015/2016, 2016/2017 and in advance for 2017/8. The application form also included applications for orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). Directions in respect of the main application are dated 21 June 2017. There was a second application made by the Applicant on the same date for a variation of a lease under part IV of the Landlord and Tenant Act 1987 (the 1987 Act). The second application was considered by a procedural judge and on 9 October 2017 a notice to dismiss was served on the parties with Directions for representations to be made on the question of jurisdiction.

Background:

2.) The Mr Bawa is the leaseholder of 73a Plumstead Common Road, Woolwich, London, SE18 3AT, which is a ground floor flat (the subject flat), Mr Bawa is identified as the Applicant or Tenant throughout this decision. Likewise, South London Ground Rents Limited is the freeholder owner of 73 Plumstead Common Road, Woolwich, London, SE18 3AT and is represented in these applications by Pier Property Management and is identified in these reasons as either the Respondent or Landlord.

3.) The Directions dated 21 June 2017 identified the issues and set out the timetable as to how the parties should prepare for the case. The issues identified in the Directions were:

- The service charges for years April 2013 to March 2017 and estimated costs for April 2017 to March 2018.

- Whether the judgment in the County Court at Lambeth in case B9CW58X4 means that the Tribunal has no jurisdiction for the 2014-2015 service charge year.
- Whether the works are within the landlord's obligations under the lease/whether the cost of works are payable by the leaseholder under the lease
- Whether the costs of the works are reasonable.
- Whether the Tribunal should make an order under section 20C
- Whether the Tribunal should make an order for reimbursement of the application/hearing fees.

The Law:

4.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Lease:

5.) Although no Land Registry details were provided, it appears that Mr Bawa holds the lease of the subject property from a lease dated 6 February 2004. The original parties were Benjamin Ehrenfeld as Lessor and Blackacre Properties Limited as the Lessee. The lease is for a term of 125 years from 25 December 2002.

6.) The lease sets out the service charge year ("the Accounting Period") as 1 April to 31 March and that the lessee's service charge proportion is 50%. Under clause 4.4 the lessee covenants to pay the service charge and there is reference to the service charge mechanism set out in the Fifth Schedule. The arrangement is for the payment of an Interim Maintenance Charge to be paid in advance on 1 April and 1 October each year. Once the service charge year is ended a 'certificate' is served on the lessee that states the total expenditure, the sums paid by the lessee by means of the Interim Maintenance Charge and the Further Interim Maintenance Charges and the relevant Maintenance Service Charge. It is provided that any surpluses of the Interim Maintenance Charge above the Maintenance Service Charge will be retained by the Lessor and credited to the lessee's account for future accounting periods, likewise if there is a shortfall there are arrangements for such shortfall to be recovered from the lessee.

7.) The "Total Maintenance Expenditure" is defined as the expenditure incurred by the Landlord in carrying out its obligations under Clauses 6.2, 6.3 and 6.4 of the lease. Under clause 6.2 the Landlord covenants to maintain and repair the main structure, the main services and the common parts and to keep the common parts lit and cleaned. There are obligations to carry out external decorations every third year and internal decorations every seventh year. The Landlord is also obliged to insure the building and there are provisions that allow the Landlord to employ staff and cleaners. The landlord may also employ

managing agents and accountants to undertake the general management of the building including the collection of rent and service charges and also the employment of professionals for the proper maintenance, safety and administration of the building.

8.) Under clause 6.3 the Landlord covenants "*To insure and keep insured the Building (unless such insurance be vitiated by any act or default of the Lessee or any party claiming through the Lessee or his or their servants agents licensees or visitors) against loss or damage by fire and such other risks as the Lessor shall think fit with an Insurance Office of repute and pay all premiums in the full reinstatement value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstatement thereof and three years loss of rent and to insure the fixtures and fittings plant and machinery of the Lessor against such risks as are usually covered by a House Owners' Comprehensive Insurance Policy and to insure against third party claims made against the Lessor in respect of the Demised Premises or any part thereof being damaged or destroyed by fire or other insured risk as soon as reasonably practicable to lay out the insurance moneys in the repair rebuilding or reinstatement of the premises so damaged or destroyed subject to the Lessor at all times being able to obtain all necessary licences consents and permissions from all relevant authorities in this respect PROVIDED ALWAYS that for any reason other than default of the Lessor the obligation on the part of the Lessor hereinbefore contained to rebuild or otherwise make good such destruction or damage as aforesaid becomes impossible of performance the said obligation shall thereupon be deemed to be discharged and the Lessor shall stand possession of all monies paid to it under and by virtue of the policies of insurance hereinbefore required to be maintained upon trust to pay to the Lessee or any Mortgagee of the Lessee of which the Lessor shall have received notice such proportion (if any) of the said moneys as may be agreed in writing between the Lessor and the Lessee and the Lessees Mortgagee as aforesaid (if any) or in default of agreement as aforesaid as shall be determined by a Valuer appointed by the President for the time being of the Royal Institution of Chartered Surveyors upon the request of the Lessor or the Lessee or the Lessees Mortgagee (if any) to be fair and reasonable having regard only to the relative values of the respective interests of the Lessor or the Lessee in the Demised Premises and the Building immediately before the occurrence of the said destruction or damage and it is hereby declared that any such determination as aforesaid shall be deemed to be made by the said Valuer as an expert and not as an Arbitrator.*"

Inspection:

9.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the subject flat. However, the Tribunal understands from the papers and the parties that the building in which the subject flat is located is an

inner terrace house that has been converted to provide two self-contained flats, each with their own front door. There are no internal communal parts, although there are communal grounds to the front of the property providing access, some parking and a small garden area. The photographs of the building show that there is a mature tree in the front garden area. We understand that there is a long communal garden to the rear of the property, but Mr Bawa explained that this area is only accessed through his flat. There was a lease plan included in the papers but this related to the first floor flat and there was no coloured edges delineating the demised areas and common parts.

Hearing:

10.) A hearing was arranged for Tuesday 14 November 2017 at 10.00am at 10, Alfred Place, London, WC1E 7LR. In attendance were Mr Bawa in person and Mr Bland, a solicitor from Pier Property Management, representing the Respondent.

Representations/Discussion/Determination:

11.) The Tribunal had the benefit of a bundle of documents, statements from both Mr Bawa and Pier Property Management on behalf of the landlord. There were also oral submissions made by Mr Bawa and Mr Bland. Included in the papers were references to issues beyond the jurisdiction of the Tribunal. The Tribunal has focused on the points that it can resolve for the parties and therefore these reasons provide a summary of the relevant submissions made by the parties. It should be noted that amongst the papers were references to the enfranchisement of the building and the Applicant. This aspect was not covered in the two applications received by the Tribunal and is therefore not considered in these reasons. Mr Bawa should seek advice if he wishes to pursue these issues.

12.) As a preliminary matter the Tribunal considered whether it had jurisdiction to consider the insurance premiums and the insurance administration charge. It was explained that Mr Bawa had originally made a claim in the County Court under claim number C3QZ2A0Z in respect of ground rents, insurance and insurance administration charges. There was a defence and counter-claim for those items served by the Respondent for arrears totalling £3,813.79 for 2013/4, 2014/5 and 2015/6 service charge years. Mr Bawa stated that he had withdrawn his claim in the County Court and that as such the counter-claim should fall away and all the matters in relation to the insurance should be considered by the Tribunal. Mr Bland explained that the Respondent's position was that there was not an effective Notice of Discontinuance served by Mr Bawa and that the counter-claim was extant. The matter was listed for the following day, 15 November 2017 at the County Court at Shoreditch and Clerkenwell. Mr Bland explained that the Respondent intended to make an application to extend the claim to cover the insurance issues for 2016/7 and 2017/8 service charge years. The Tribunal determined that it would not be appropriate to consider a matter

already before the County Court. It was explained that there was an option for Mr Bawa to make an application for the County Court to transfer the insurance matters to the Tribunal, but until that transfer is made the Tribunal will not consider the issues in relation to the insurance and associated administration charges. For clarity the Tribunal does not have any jurisdiction to consider ground rents.

Application to Vary the Lease:

13.) Mr Bawa's second application was to vary the terms of his lease under section 35 of the 1987 Act. Essentially Mr Bawa was seeking changes to his lease in respect of the ground rent provisions, the lease plan attached to his lease and the insurance provisions. The Tribunal discussed the extent of section 35 and the grounds upon which a lease may be varied. Mr Bawa had nothing further to add in respect of the ground rent provisions. In respect of the lease plan, Mr Bawa was seeking an order from the Tribunal that the Landlord registers the original title plans at the Land Registry. In respect of the insurance provisions, Mr Bawa considered that the Landlord does not insure the property. He made this assertion on the basis that the premiums were too high and also that the Landlord did not provide any evidence as to payments. When he was directed to one of the certificates of insurance he stated that in the County Court papers there had been a mis-description of the property for the 2013/2014 service charge year. He accepted that the papers for 2014/5 seem correct. When asked how the lease fails to make satisfactory arrangements as to the insurance, he responded that the lease should detail the process including competitive tendering for insurance and that the process is transparent. Reference was also made to section 164 of the 2002 Act. Mr Bland limited his response to directing the Tribunal to clause 6.3, which he claimed is an extensive clause detailing the Landlord's covenant to insure.

Tribunal's Determination:

14.) The grounds upon which a tribunal may vary the terms of a lease as provided under section 35 of the 1987 Act are limited. The grounds do not extend to the ground rent provisions nor do they cover any issues in relation to the registration of title plans at the Land Registry. Although the grounds set out under section 35 do include the insurance provisions under the lease, the Tribunal is obliged to consider whether the lease fails to make satisfactory provision with respect to the insurance. The Tribunal accepts the submission made by Mr Bland that clause 6.3 is quite extensive. It is accepted that there is no detailed process described as how the insurance is to be obtained, but in the opinion of the Tribunal that is not necessary. There are other remedies available if the Landlord fails to comply with the covenant or if there are issues as to the reasonableness of the cost of the insurance. In the opinion of the Tribunal clause 6.3 does make adequate provision for the Landlord to secure insurance of the building and as such we make no order to vary the

lease. For completeness it should be noted that section 164 of the 2002 Act applies when the terms of a lease require the Tenant of a house to insure the house with an insurer either nominated or approved by the Landlord. The subject property in this case is not a house and there is no obligation in the subject lease for the Tenant to obtain insurance for the property and therefore this section does not apply.

Service Charges:

15.) It appears that the 2014/15 service charges had been subject to a previous County Court claim under claim number B9CW58X4. There was no copy of the County Court judgment. Mr Bawa stated that he had appealed that judgment in February 2016 and the appeal is still outstanding. Mr Bland had not seen a copy of the appeal. However, both parties accepted that the 2014/15 year had been dealt with and was not an issue for the Tribunal.

16.) The service charges years remaining are 2013/4, 2015/6, 2016/7 and 2017/8. In respect of the 2013/4 service charge year the two items identified as being in dispute are the insurance premium and the insurance administration fee and as mentioned in paragraph 12 above this is already before the County Court and therefore will not be considered by this Tribunal. For the three remaining years there are actual figures for the 2015/6 year and only estimated figures for 2016/7 and 2017/8.

17.) For 2015/6 The total Interim Maintenance Charge sought from Mr Bawa was £1,045.00 [p89] and the actual Maintenance Charge via the service charge accounts was £1,179.00 [p143]. The Interim Maintenance Charge for 2016/7 was £895.00 [p57] and for 2017/8 was £1,357.00 [p58]. The various items of dispute are dealt with under the following headings.

Bank Changes:

18.) The actual bank charges for 2015/6 were £56 [p143] and for 2016/7 [p57] and 2017/8[p58] the estimated charges were £70. Mr Bawa accepted that the bank charges were recoverable under the service charge regime. However he stated that no services were provided as there were no transfers. On the Scott Schedule it is assumed that the £56 is a 50% charge and that the total charges were £224.00 for 2015/6 and £140 for 2016/7. He considered that £5.00 would be a reasonable sum for this item. The Tribunal were referred to a Yorkshire Bank statement and the monthly charges were shown to be £5.00 [p239]. Mr Bawa was concerned that this statement did not relate to his property. The account is in the name of IPM LTD re 73 Plumstead Common SC Client. It was explained that the managing agent operates separate accounts for each property and complies with the RICS code of practice.

Tribunal's Determination:
19.) The total amounts for each year are £56 for 2015/6 and £70 for 2016/7 and 2017/8 and Mr Bawa's contribution is a 50% proportion. It is clear that there is a bank account in place and although not an extensive service charge regime, there will be items of income and expenditure going through the account. The banking arrangements seem to be in accordance with the RICS code and as such banking charges for each of the three years are determined by the Tribunal to be reasonable and payable.

Accountancy Fees:
20.) For 2015/6 the accountancy fees are £324.00 [p143], and £276.00 for 2016/7 [p57] and 2017/8 [p58]. Again Mr Bawa accepted that the accountancy fees were recoverable under the lease. However he stated that no services were provided. On the Scott Schedule he assumed that the £324 is a 50% share and that the total charges were £1,252.00 for 2015/6 and £552.00 for 2016/7 and as such were extortionate. It was confirmed that the charges of £324.00 and £276.00 were the total charges and that Mr Bawa only pays a 50% share. Mr Bawa's position was that there was no evidence of maintenance, management or out of hours services for the building and it was difficult to see what accountancy work was involved. Mr Bland took the Tribunal to the invoice for the accountancy services [p264], which showed the fees were £250.00 plus VAT, totaling £300.00. He was unable to explain the further £24.00 for the 2015/6 year but then suggested that this was a payment on account for the 2016/7 year. It was explained that the accountancy practice was to ensure that the accounts are prepared properly as required by the lease and the RICS code of practice. The work involves an independent accountant auditing the service charges and producing a report certifying the expenditure.

Tribunal's Determination:
21.) The lease has a detailed process in relation to the service charge mechanism. Whilst it is appreciated that there is minor expenditure being incurred in respect of the building, there is still a need for service charge accounts to be prepared and certified. In the opinion of the Tribunal the professional fees of £250 plus VAT for undertaking the process appear reasonable. In respect of the £24 that Mr Bland states relates to the 2016/7 year, this is a sum that should show up in that accounting year once those service charge accounts have been prepared. The Tribunal adjusts the accountancy fees for 2015/6 to £300.00 and confirms the estimated expenditure of £276.00 for the 2016/7 and 2017/8 years.

Management Charges:
22.) The actual management fee for 2015/6 and the estimated fee for 2016/7 was £444 [p143 and p58] and the estimated fee for 2017/8 was £468 [p58]. Mr Bawa accepted that the fee is recoverable under the terms of the lease but

considered that no services were carried out and again suggested that fees of £1,776 (for 2015/6), £888 (2016/7) and £936 (2017/8) are extortionate. He said that the inspections never occur. There had been an instance when someone came very early on a Saturday am (pre 7.00 am) for a health and safety inspection but there had been no prior notification and no identification, the contractor was initially refused access and did not return as arranged. Mr Bawa stated that he had written/emailed re the service charges but there had been no response, but accepted that a tree at the front of the property had been pruned and that there had been some communication on that issue. He also accepted that Shoregate had attended the building to carry out an inspection to report on the defects at the building. His position was that as no work was done then there should be no fee.

23.) Mr Bland explained that the fees equated to £185 and rising to £195 plus VAT per flat and that the sums shown in the accounts were the total fees for the property. The managing agent is Inspire Property Management and they manage a difficult portfolio. When the Respondent purchased a large portfolio the managing agents opened an office to deal with the portfolio. It is stated that there are four inspections of the property each year and that the level of fee covers a number of back office functions such as liaison with tenants, contractors and clients, preparation of budgets, provision of information and raising service charge demands and settlement of invoices. It is acknowledged that repairs are minimal but there is a gap in the service charge funding and the managing agents are working without any funds. It was stated that the agents are compliant with the ARMA-Q and the RICS code of practice. Mr Bland suggested that the inspections would be external inspections but acknowledged that there may have been no inspection of the rear communal grounds as these had to be accessed via Mr Bawa's flat. He confirmed that there were no inspection notes and there were no tenant's meetings and no evidence of the liaison that was undertaken but that there was contact with the other tenant in the building and there would have been some communication with the Respondent's legal team in respect of debt recovery. It was explained that the Respondent's portfolio comprised 120 properties and that the subject property is typical of the type of properties in the portfolio, but that the majority would have some type of communal hallway.

Tribunal's Determination:

24.) This is a building that would require a minimum amount of management work given the nature of the building and the lack of internal communal areas. However, it is clear that some management function is occurring and Mr Bawa acknowledged this in respect of the tree pruning and the inspection by Shoregate. There is also the management of the building in respect of the service charge regime. The Tribunal accepts that there may be some frustration on the Respondent's part as to the lack of funds to progress works.

Overall the Tribunal are satisfied that the management fee is reasonable for the scope of works undertaken at the property and given the location of the building. The total sums of £444 for 2015/6 and estimated for 2016/7 and estimated £468 for 2017/8 are determined to be reasonable and payable.

Repairs:
25.) The repairs are £313 for 2015/6 [p143] and estimated at £500 for 2016/7 [p57] and 2017/8 [p58]. In respect of the actual expenditure for 2015/6 the Tribunal were referred to an invoice in respect of the Shoregate inspection and report for £306.60 [p251]. The other item was an invoice relating to duplicate keys for the portfolio. However, it has been conceded by the Respondent that the Applicant should not have been charged for this item and £6.52 is to be credited to Mr Bawa. Once Mr Bawa was directed to the report [p288] he confirmed that he was happy with the figure. In respect of the estimated sums of £500 for the following years, Mr Bawa expressed his concerns about what work will be done and wanted to see an itemized list. Mr Bland stated that the major works indicated by Shoregate had a budget of £36,000. The sum of £500 was a repair budget and was not excessive and if no expenditure were incurred then this would be reflected in the certified accounts. It is noted on the Scott Schedule that no repairs were incurred for 2016/7 and no costs in 2017/8 to date.

Tribunal's Determination:
26.) The costs for 2015/6 are now revised and after the concession total £307.00 and this sum is agreed in respect of the Shoregate invoice. The budget sums of £500 for 2016/7 and 2017/8 are reasonable. It would be prudent property management to ensure that a sum is allocated in the budget for minor repairs that may arise on a reactive basis. If no expenditure is incurred then the actual accounts will be adjusted to reflect that. As such the Tribunal confirms the sums of £500 for the two estimated service charge years.

Landscaping:
27.) For the landscaping costs no sums were incurred in 2015/6 [p143]. The budgeted sums are £500 [p57] and £200 [p58]. Whilst accepting that the sums were recoverable under the terms of the lease Mr Bawa stated that he did not see any need for landscaping works, that no work had been undertaken and that the sums were not itemized. Mr Bawa accepted that pruning work had been carried out to the tree to the front of the house in the last two years. He explained that the First Floor Flat had suffered some problems and there were concerns that the roots may be causing damage, so there had been some contact with the Respondent and the tree had been pruned. On behalf of the Respondent it was explained that tree work was carried out in 2016/7 at a cost of £300 and that no costs had been incurred to

date in the 2017/8 service charge year. When the service charge accounts have been finalized and certified then the actual costs will be identified.

Tribunal's Determination:
28.) There were no actual costs for landscaping for 2015/6, so the Tribunal needs only decide whether the budgeted sums for the two estimated years are reasonable. As mentioned above it would be prudent management of a building with common parts to budget a sum for any works that may arise in the forthcoming year. There are communal grounds to the front of the property and the photographs show a large tree, as indicated by Mr Bawa there was some pruning work carried out, likely to have been within the 2016/7 service charge. Additionally it appears that there are some communal gardens to the rear of the house that could give rise to some costs. In the circumstances the Tribunal considers that budgeting for landscaping works is a reasonable step and the costs that have been estimated are relatively small and are reasonable. Therefore the Tribunal determines that the estimated costs of £500 for 2016/7 and £200 for 2017/7 are reasonable and payable.

29.) General - It should be noted that the costs for 2016/7 and 2017/8 are only estimated charges and may be subject to change once the actual costs have been identified. Accordingly the actual costs may be significantly below the sums that have been estimated. Once the actual costs are known and the works have been undertaken then if there are any issues about the reasonableness of those actual costs in relation to the work undertaken, that may be subject to a further application to this Tribunal.

30.) There is one item that was included in the Scott Schedule, but was not identified as a service charge item in any of the relevant service charge accounts or budgets and that was a visitation fee of £60 in the 2015/6 year. There is no further evidence such as invoices, but it is noted on p54 on Mr Bawa's statement of account that a visitation fee of £100.00 was allocated to his account as an item of expenditure on 7 October 2015. On the Scott Schedule Mr Bawa stated that he accepted that the sum was recoverable under the lease and mentioned that there is a claim for £900 that is subject to appeal. The Respondent replied that this is not a service charge item and was not a cost that was incurred and that site visits are included in the management fee. This potentially is an administration charge but if so then it would need to be subject to a proper demand with a summary of rights and obligations. Given the Respondent's position, and as a matter of completeness the Tribunal determines that this sum is not payable by the Applicant.

31.) From the minor adjustments made and described above, the Tribunal determines the actual service charges for 2015/6 as £1,107.00 (from £56 - bank charges; £300 – accountancy fees; £444 – management fees and £307 –

repairs). Mr Bawa's share is therefore £553.50. In respect of the budgeted figures for 2016/7 the Tribunal determines the charges as £1,790.00 and Mr Bawa's share is £895.00 and in respect of the budgeted figures for 2017/8 the Tribunal determines the charges as £2,714.00 and Mr Bawa's share is £1,357.00.

Section 20C:

32.) Mr Bawa made an application that costs incurred by the Respondent in relation to this application should not be treated as relevant costs in future service charge years. He considered that after making the claim many of the issues fell away and that his applications had merit. He explained that he was representing himself and that costs should therefore be limited. Mr Bland stated that the Respondent would be opposing such an application. The Respondent has been put to costs in dealing with these issues. There has been an attempt to keep costs to a minimum, for example counsel had not been instructed. It was considered that the Applicant's actions were in conflict with the overriding objective and that the case started in the County Court then was pursued in the First-tier Tribunal and this was an attempt to slow matters down. Mr Bland did confirm that the Respondent would not be pursuing a Rule 13 application. Mr Bland stated that he did not know what were the costs were in relation to the applications but the Respondent had tried to minimize their costs. The Applicant had prepared the bundle but the Respondent had to supplement the bundle as some documents were missing.

Tribunal's Determination:

33.) Mr Bawa has not been successful in his application to vary the lease and this is mainly due to his mis-understanding of the grounds under section 35 of the 1987 Act. In respect of his application under section 27A of the 1985 Act in relation to the service charges, he has had little success. The majority of the costs are estimated costs and he has again mis-understood how the figures relate to his 50% contribution to those costs. Perhaps a clearer dialogue between the parties could have resolved these issues. The impression is that Mr Bawa has tried to seek answers from the Respondent, on the other hand the Respondent feels frustrated that Mr Bawa has not accepted the budgeted figures and has not contributed to the service charges. Overall the Tribunal considers that the Respondent has been put to cost in dealing with these applications and that it would be reasonable for them to seek their costs through the service charges. Therefore the Tribunal makes no order that the costs incurred in respect of these applications are not to be treated as 'relevant costs' for future service charge accounts. Once any sums are allocated to the service charges and if they are disputed and cannot be resolved between the parties, they can be subject to a further application to the First-tier Tribunal.

Schedule 11, Paragraph 5A:
34.) Mr Bawa made a further application for an order reducing or extinguishing the tenant's liability to pay an 'administration charge in respect of litigation costs". His position was that the First-tier Tribunal was a low cost jurisdiction and that as such costs should be kept low. Mr Bland stated that he didn't think that the Respondent would be seeking any costs from Mr Bawa as administration charges.

Tribunal's Determination:
35.) The Tribunal can see no clause within the lease for the landlord to recover any administrative charges against the Applicants, other than the conventional section 146 clause. As no order was made under section 20c in paragraph 33 above, then the Respondent may seek any costs any costs in relation to this application via the service charges. In the alternative the Respondent may take the position that the costs could be claimed directly from the Applicant as an administration charge. There seems to be no scope under the lease for such an administration charge other that the usual section 146 procedure. It does not seem that any forfeiture proceedings have been commenced and as such it is unlikely that costs in relation to this application have been incurred in contemplation of such a step. However, the Tribunal is obliged to make a determination on this application. It is clear that Mr Bawa has pursued his case as an attempt to clarify his own liability in the lease. The steps he has taken have not been successful in reducing his liability and as such the Respondent has been put to cost. In the circumstances the Tribunal determines that insofar as permitted under the lease, that it would be reasonable for the Respondent to recover the costs as administration charges. Therefore the Tribunal makes no order to extinguish the Applicant's liability to pay administration charge in respect of litigation costs.

Reimbursement of Fees:
36.) Mr Bawa stated that he did not wish to make an application for the Respondent to reimburse his application and hearing fees.

Chairman: *Helen C Bowers* **Date:** *3 January 2018*

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to

the First-tier Tribunal at the Regional office, which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix

LANDLORD AND TENANT ACT 1985

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 provision of services or the carrying out of works, only of the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.
(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction
(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 it 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 fro 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 it 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 subject of determination by a court, or
(d) has been 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.– Limitation of service charges: costs of proceedings.
(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 First-tier 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 the 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;
(ba) in the case of proceedings before the First-tier Tribunal, to the 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 the county court.
(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

LANDLORD AND TENANT ACT 1987

35.– Application by party to lease for variation of lease.
(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.
(2) The grounds on which any such application may be made are that the lease

fails to make satisfactory provision with respect to one or more of the following matters, namely—
(a) the repair or maintenance of—
(i) the flat in question, or
(ii) the building containing the flat, or
(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;
(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);
(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;
(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);
(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;
(f) the computation of a service charge payable under the lease;
(g) such other matters as may be prescribed by regulations made by the Secretary of State.
(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—
(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and
(b) other factors relating to the condition of any such common parts.
(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.
(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—
(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and
(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and
(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.
(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Tribunal Procedure Rules shall make provision—
(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows

or has reason to believe is likely to be affected by any variation specified in the application, and
(b) for enabling persons served with any such notice to be joined as parties to the proceedings.
(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—
(a) the demised premises consist of or include three or more flats contained in the same building; or
(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
(8) In this section *"service charge"* has the meaning given by section 18(1) of the 1985 Act.
(9) For the purposes of this section and sections 36 to 39, *"appropriate tribunal"* means—
(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Schedule 11 Paragraph 5A - Limitation of administration charges: costs of proceedings
(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
(3) In this paragraph—
(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	*"The relevant court or tribunal"*
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court."

TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL) (PROPERTY CHAMBER) RULES 2013

Rule13.— Orders for costs, reimbursement of fees and interest on costs

(1) The Tribunal may make an order in respect of costs only—
(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration case.
(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
(3) The Tribunal may make an order under this rule on an application or on its own initiative.
(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.
(7) The amount of costs to be paid under an order under this rule may be determined by—
(a) summary assessment by the Tribunal;
(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is

to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.