



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

Case Reference : CAM/26UB/LSC/2017/0087

Property : Flat 2 Lea Road, Hoddesdon,
Hertfordshire EN11 0NP

Applicant (Tenant) : Natalia Savage (Flat 2)

Respondent (Landlord): Elyar Properties Ltd
Respondent's Agent : Moreland Estates
Respondent's Solicitors: Moerans Solicitors

Date of Application : 16th August 2017

Type of Application : A determination of the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold & Leasehold Reform Act
2002

Application under section 20C of the
Landlord and Tenant Act 1985 for the
limitation of service charge arising from the
landlord's costs of proceedings

Application for Costs under Rule 13 of the
Tribunals Procedure (First Tier Tribunal)
Property Chamber) Rules 2013

Tribunal : Judge JR Morris
Miss M Krisko BSc (Est Man) BA FRICS
Mr MZ Bhatti MBE

Date of Hearing : 7th December 2017

Date of Decision : 22nd December 2017

DECISION

The Tribunal having made a determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002) following the transfer of Claim Number D4QZ74Y6 from the County Court, the case is now returned to the County Court sitting at Hertford for such further order as may be appropriate.

Decision

1. The Tribunal determines that all the Administration Charges demanded from Mrs Savage up to the date of this Decision are unreasonable and not payable.
2. The Tribunal determines:
 - the reasonable costs incurred for the year ending 31st March 2016 to be £3,428.73 of which Mrs Savage's share is £693.74.
 - the reasonable costs incurred for the year ending 31st March 2017 to be £3,627.67 of which Mrs Savage's share is £725.53
3. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs of these proceedings shall not be charged to the Service Charge.
4. The Tribunal Orders that Elyar Properties Ltd reimburse the Hearing Fee of £200.00 within 28 days of receipt this Order.
5. The Tribunal Orders that costs of £140.00 be paid to Mrs Savage by Elyar Properties Ltd within 48 days of the receipt of this Decision by the parties.
6. The Tribunal returns this matter to the County Court.

Reasons

Application

7. This Application is for a determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002) in the form of costs payable for enforcement of service charge payments. The years in issue are the costs incurred for the period 24th June 2014 to 24th May 2017.
8. Claim Number D4QZ74Y6 on 2nd May 2017 was issued by Elyar Properties Ltd in the County Court Business Centre and transferred to Hertford County Court on 24th May 2017. District Judge Chesterfield on 8th June 2017 asked for reasons to be given by 29th June 2017 for not transferring the matter for a determination by the Tribunal. Mrs Savage submitted that the Tribunal had already made a determination with regard to the period from 24th June 2013 to the 31st March 2015. On the 16th August 2017 District Judge Chesterfield transferred the issue of reasonableness and payability of the Service Charge in issue to the Tribunal.

9. Notwithstanding Elyar Properties Ltd being the claimant, the transfer is due to the defence by Mrs Savage that the service and administration charges are unreasonable. Therefore, for the purposes of the proceedings before the Tribunal Mrs Savage is the Applicant and Elyar Properties Ltd, the Respondent.
10. The Tribunal issued the following decision on the 26th February 2016 with regard to Mrs Savage:
 1. The Tribunal determines the reasonable costs incurred for the 5 months to 1st March 2014 to be £1,141.89 and for the year ending 31st March 2015 to be £2,586.88. Mrs Savage has been in possession since the date from which the accounts commence i.e. November 2013 and therefore the one fifth unit charge payable for the 5 months to 31st March 2014 is £228.37 and for the year ending 31st March 2015 is £517.38.

These costs are payable, subject to any funds which are held to the Applicant's credit, within 28 days of receipt of a demand in accordance with legislation.
 2. The Tribunal determines the reasonable estimated charge to be incurred for the year ending 31st March 2016 is £2,430.00. Therefore, the one fifth unit charge is £486.00 per flat. These costs are payable within 28 days of receipt of a demand in accordance with legislation subject to any funds which are held to the Applicant's credit.
 3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs of these proceedings shall not be charged to the Service Charge.
 4. The Tribunal orders that the Respondent reimburse the Application Fee of £125.00 and the Hearing Fee of £190.00 within 28 days of this Order.
 5. The Tribunal determines that all the Administration Charges demanded from Mrs Savage up to the date of this Decision are unreasonable and not payable.
11. On 13th October 2014 Deputy District Judge Perry sitting in the County Court at Hertford stayed Claims A9QZ6398 and A5QZ4161 in order for Mrs Savage and others to make an Application to the Tribunal for a determination in respect of the service and administration charges incurred for the accounting years ending 31st March 2014 and 2015 and to be incurred for the accounting year ending 31st March 2016. An Application having been made the Tribunal made such determination. That determination included the periods currently in issue of 24th June 2014 to the 31st March 2015. Under the principle of *res judicata* and section 27A (4) of the Landlord and Tenant Act 1985, the Tribunal cannot now adjudicate upon them again. Any failure to comply with the Tribunal's Decision must be enforced in the County Court.

12. Therefore, the Tribunal can only make a determination in respect of the service charge costs incurred (actual costs) and administration charges (if any) for the period from the years ending 31st March 2016 and 2017.
13. Following the transfer from the County Court for a determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002) Directions were issued on 29th September 2017. These required the Applicant, Mrs Savage, to file a statement of case by 24th October 2017, Elyar Properties Ltd to file a statement of case by 7th November 2017 with all other documents to be provided by 14th December 2017. Mrs Savage was required to provide 4 copies of the hearing bundle 10 days before the hearing which was scheduled for 7th December 2017. Mrs Savage has complied with Directions but Elyar Properties Ltd has not.

The Law

14. The relevant law is contained in the Landlord and Tenant Act 1985 and 1987 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
15. Section 18 Landlord and Tenant Act 1985
 - (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
 - (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
 - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
 - (3) *for this purpose*
 - (a) *costs include overheads and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
16. Section 19 Landlord and Tenant Act 1985
 - (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 if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*
 - (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment*

shall be made by repayment, reduction or subsequent charges or otherwise.

17. Section 27A Landlord and Tenant Act 1985
- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which –
 - (a) has been agreed or admitted by the tenant,
 - (b) has been or is to be referred to arbitration pursuant to a post arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
18. Schedule 11 Commonhold and Leasehold Reform Act 2002
1. Meaning of “administration charge”
 - (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
 - (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.
2. Reasonableness of administration charges
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
3. (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—
- (a) any administration charge specified in the lease is unreasonable, or
 - (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
- (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.
- 5 Liability to pay administration charges
- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) *The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.*
- (4) *No application under sub-paragraph (1) may be made in respect of a matter which—*
 - (a) *has been agreed or admitted by the tenant,*
 - (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
 - (c) *has been the subject of determination by a court, or*
 - (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*
- (6) *An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*
 - a) *in a particular manner, or*
 - b) *on particular evidence,**of any question which may be the subject matter of an application under sub-paragraph (1).*

19. Section 20C Landlord and Tenant Act 1985

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 Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*
- (2) *The application shall be made—*
 - (a) *in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;*
 - (aa) *in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;*
 - (b) *in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*
 - (c) *in the case of proceedings before the Upper Tribunal, to the tribunal;*
 - (d) *in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.*
- (3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

20. Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013 states:
The Tribunal may make an order in respect of costs only-
(b) *if a person has acted unreasonably in bringing, defending or conducting proceedings*

The Lease

21. A copy of the Lease for the Property was provided dated 18th February 2009 for a term of 125 years from 22nd July 2008 between Barion Limited (the Lessor) (1) and Paul Frederick Maher (the Lessee) (2). The Lessor's interest is now vested in the Respondent and the Lessee's in the Applicant. The Leases were said to be in like form.
22. The relevant provisions of the Lease were identified as follows:
23. Under Clause 3 (5) (a) the lessee covenants to:
Contribute and pay on demand one fifth of all costs charges and expenses from time to time incurred to to be incurred by the Lessor in performing and carrying out the obligations and each of them under Part IV of the Schedule
24. Under Part IV Paragraph 1 of the Schedule to the Lease the Lessor covenants to *whenever necessary and in any event within two months of a notice being served [in accordance with section 196 of the Law of property Act 1925 (as stated in Clause 8 of the Lease)] to:*
Maintain repair redecorate and renew
(a) *The external walls and foundations and roof...gutters, rainwater pipes*
(b) *The gas pipes and water pipes drains and electric cables and wires*
(c) *All such dustbin areas drying areas paths forecourts and off-street parking places and parking spaces as are included in the Estate*
25. Under Part IV Paragraph 6 of the Schedule to the Lease the Lessor covenants to
The Lessor will at all times during the said term insure and keep insured the Building ...in the names of the Lessor and Lessee...
26. Under Part IV Paragraph 8
The Lessor shall keep proper books of account a of all costs charges expenses incurred by it in carrying out its obligations ...and an account shall be taken on 31st of March of each year
27. Under Part IV Paragraph 9
The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a qualified accountant who shall certify and total amount of the said costs charges and expenses (including the audit fee for the said account and any professional accountancy charges) for the period to which the account relates and the proportionate amount due from the Lessee to the Lessor under this Lease credit being given for any amount which shall already have been paid under Clause 3(5)(a) of this Deed

28. Under Part IV Paragraph 10 of the Schedule to the Lease:
The Lessor shall within two months of the date of which the said account is taken serve on the Lessee a notice in writing stating the said total and proportionate amount certified in accordance with the last preceding paragraph together with details if known and an estimate of the amount required the following year covenants
29. The Definition of the Demised Premises in Clause 0.1 states the premises as described in Paragraph (E) of Part V of the Schedule to the Lease which states at paragraph vi to include:
the windows and doors including the glazing and the frames
Part III of the Lease sets out the obligations of the Lessee which includes at paragraph 13:
To clean the windows of the Demised Premises at least once a month

Description & Inspection of the Property

30. The Property is a purpose-built block of 5 flats. Flats 1 and 2 have their own entrances whereas flats 3, 4 and 5 are duplex and are accessed via a common doorway to a hall with stairs to the first floor off which are the entrance doors to the three flats. The upper floor of these flats is in the roof space and has velux type roof windows. There are five parking spaces, one for each flat.
31. The Property was constructed circa 1990 and is built of brick elevations with concrete tile roof. The windows are upvc double glazed and the rainwater goods are also upvc. The external doors are upvc and internal are probably composite panel fire doors.
32. Externally the building is in fair to good condition as might be expected for its age. However, there is a roof and ridge tile missing and the guttering is in need of attention. The grounds around the building are block paved and gravel with an area which is laid with bark for weed control. The gravel and wood bark area has some weeds growing through it.
33. The internal common parts are small. Their condition was consistent with having been cleaned regularly since the previous inspection in 2016 although did not appear to have been cleaned in the past couple of weeks.

Attendance

34. Mrs Natalia Savage attended and represented herself. Neither Elyar Properties Ltd or its representatives (Managing Agent or Solicitor) attended.

Administration Charges

35. Mrs Savage stated in written representations confirmed at the hearing that she took possession of her property on 25th July 2013. She then outlined the circumstances relating to the issue of the Administration Charges.

36. Mrs Savage made a written statement in which she stated that she made an Application to the Tribunal following the stay of a claim by Elyar Properties Ltd in the County Court at Hertford. By the Tribunal's Decision of the 26th February 2016 it was determined that a reasonable service charge for the costs incurred in respect of her flat:
For the year ending 31st March 2014 (5 months) was £228.37
For the year ending 31st March 2015 was £517.38.
37. It was further determined that a reasonable service charge for the costs to be incurred for the year ending 31st March 2016 was £486.00.
38. The Tribunal also ordered that the Tribunal Application Fee of £125.00 and Hearing Fee of £190.00 should be reimbursed by Elyar Properties Ltd.
39. The amount to be paid for the period up to the 31st March 2016 was £1,231.75. This less £315.00 Application and Hearing Fee amounted to £916.75.
40. Mrs Savage said that she had paid £1,590.00 and therefore at the start of the financial year ending 31st March 2017 she was in credit by £673.25.
41. She said that she had paid the Ground Rent of £62.50 for the period 24th June 2016 to 24th December 2016 and again for the period 24th December 2016 to 24th June 2017.
42. Since the Tribunal Decision Mrs Savage said that Elyar Properties Ltd's Solicitors sent a demand for service charges dated 19th May 2016 and again on the 7th November 2016 which demanded £2,626.07 (copy provided) neither of which made any acknowledgement of the Tribunal's Decision. She said she wrote a letter on the 4th January 2017 referring to the Tribunal Decision of the 26th February 2016 but received no reply. She subsequently received a claim which had been made against her in the County Court on the 2nd May 2017 and a demand from Elyar Properties Ltd's Agent dated 24th August 2017 as follows:
- | | |
|--|---------------|
| Service Charges on account from: | |
| 24 th June 2014 to 24 th December 2014 | £530.00 |
| 24 th June 2015 to 24 th December 2015 | £581.50 |
| 25 th December 2015 to 23 rd June 2016 | £581.50 |
| 24 th June 2016 to 24 th December 2016 | £627.20 |
| 25 th December 2016 to 23 rd June 2017 | £627.20 |
| 24 th June 2017 to 24 th December 2017 | £628.50 |
| Court Fee Issue Claim D4QZ74Y6 7 th May 2017 | £185.00 |
| Preparation for Section 146 Law of Property Act 1925 | £1,947.50 |
| Ground Rent | £62.50 |
| Arrears Letter Charge | <u>£30.00</u> |
| Total | £5,800.90 |
43. Mrs Savage said that she later received a demand from a debt collector, Service Charge Recovery, which stated that she owed £6,188.40 which included a fee of £375 plus VAT for the letter which claimed to include a section 146 Notice under the Law of Property Act 1925.

44. Mrs Savage submitted that the demands were unreasonable because they did not take into account either the Tribunal Decision of the 26th February 2016 or the payments she had made. Following the Tribunal Decision, she had expected to receive an amended account and demands in line with the Tribunal Decision.

Administration Charges Determination

45. The Tribunal found that the Service Charge Demands set out below for payment on account following the Tribunal Decision of the 26th February 2016 were incorrect as they did not take account of the determination or payments already made by Mrs Savage up to the 31st March 2017:

24 th June 2014 to 24 th December 2014	£530.00
24 th June 2015 to 24 th December 2015	£581.50
25 th December 2015 to 23 rd June 2016	£581.50
24 th June 2016 to 24 th December 2016	£627.20
25 th December 2016 to 23 rd June 2017	£627.20

46. Therefore, the Tribunal found it unreasonable to commence proceedings for the recovery of the Service Charge that had been determined by the Tribunal as the monies claimed were not payable therefore the Administration Charge for the Court Fee of £185.00 for Claim Number D4QZ74Y6 issued on 7th May 2017 was determined to be unreasonable.
47. The Tribunal found that the Service Charge Demand on account for the period 24th June 2017 to 24th December 2017 of £628.50 was in dispute following the transfer of the issue of reasonableness and payability of the Service Charge to the Tribunal on 16th August 2017. Therefore, the Tribunal determined it to be unreasonable to incur an Administration Charge for its recovery until the matter had been determined by a tribunal.
48. A Notice under section 146 of the Law of Property Act 1925 cannot be issued until a tribunal has made a determination that there is a non-payment of service charge (section 81 Housing Act 1996) or breach of lease (Section 168 Commonhold and Leasehold Reform Act 2002). It was therefore unreasonable to make an Administration Charge for its preparation until such determination.
49. The Tribunal therefore determines that all the Administration Charges demanded from Mrs Savage up to the date of this Decision are unreasonable and not payable.

Service Charges

50. Mrs Savage provided a copy of the service charge accounts for the actual costs for the year ending 31st March 2016 which included the amounts for the year ending 31st March 2015 (which took no account of the Tribunal's Determination of 26th February 2016) and for the year ending 31st March 2017 which stated the costs as follows:

Actual Service Charge Expenditure for year ending 31st March	2016	2017
	£	£
Accountancy Fees	315.00	320.00
Building Insurance	1,591.53	1,606.09
Common Parts Cleaning and Gardening	1,145.00	1,119.96
Drain Clearance	0	0
Common Parts Electricity	127.20	167.65
Health & Safety Fire Risk Assessment	175.00	175.00
General Repairs & Maintenance	0	163.97
Gutter Clearance	0	0
Internal Redecorations	0	0
Management Fees	952.00	952.00
Window Cleaning	0	0
Total	4,305.73	4,504.67
Charge per flat ÷ 5		

51. Mrs Savage set out her objections to the expenditure item by item in written representations which were confirmed at the hearing as follows. Her comments related to both years.

Accountancy Fees

52. Mrs Savage said she would also like to see the invoice for the fees claimed. There had been no examination or audit test on the amounts demanded or on the balance brought forward.

Building Insurance

53. Mrs Savage said that she considered the Buildings Insurance excessive.
54. She produced a quotation which Mr and Mrs Watson of Flat 1 had obtained in November 2014 from Bona Fide Property Insurance Agents. She quoted the previous Tribunal Decision at which it had been stated that Bona Fide Property Insurance Agents deal with many blocks of flats and based on the Axa Schedule provided by Elyar Properties Ltd's Managing Agent the quotation was £457 plus £75.00 for terrorism and an optional directors' cover for £122.00. It was noted at the time that the Axa Schedule provided expressly excluded terrorism cover and made no mention of directors' cover.
55. In addition, she said she had obtained two further quotes. Mercury Insurance Brokers Ltd quoting an annual premium of £578.65 including £50 administration Fee. SC Insurance Brokers Ltd quoted an annual premium around £700. Copies of the quotations were provided. She pointed out that these premiums were considerably cheaper.

Common Parts Cleaning and Gardening

56. Mrs Savage said that the charges for cleaning and gardening were very high considering that there was only one small entrance hall and single storey

communal staircase and there are no gardens only hard landscaping. She said that she had not seen any evidence of cleaning carried out at the Property in the last two years. The hallway and stairs are not very clean at all and weeds are growing through the stones and wood chippings. She added that she would like to see the cleaning and gardening contracts and invoices.

Drain Clearance

57. There is no charge for drain clearance.

Common Parts and Electricity

58. Mrs Savage submitted that the cost for electricity was high considering that there was only one timed switch for the light over the staircase. She said she would like to see the bills.

Health and Safety & Fire Risk Assessment

59. Mrs Savage said that she was sent a copy of the reports that had been undertaken on the 26th June 2014 after she had requested them. She added that there were a lot of recommendations but these have not been followed up so the reports seem a waste of time and money. She did not see what the charge of £175.00 per annum was for.

60. The Tribunal found that these assessments are now a legal requirement and that in the experience of the Tribunal members the cost of £485.00 for both the reports was not unreasonable. However, the Tribunal was of the opinion that such assessments need only be carried out periodically unless there is a change in the building. She said she would like to see the invoices.

General Repairs & Maintenance

61. With regard to repairs Mrs Savage said that she had seen no evidence that any maintenance had been carried out at the Property in the last two years. The gutters are broken and there is a problem with the roof tiles, the handle to the front door leading to the stairs is missing so that the door could not be locked and as a result the TV aerial box was stolen. Mr Evans, the tenant of Flat 5, had a new one installed at his own expense.

62. She said the accounts showed £163.97 had been spent on the Property in 2016 but she could not see what work had been carried out. Mrs Savage said she would like to see the details of the maintenance work that had been carried out.

63. The Tribunal said that they had noted that the drain cover referred to in the previous decision had now been prepared. It would appear that the charge of £163.97 was for this work.

Gutter Clearance

64. There is no charge for gutter clearance.

Window Cleaning

65. There is no charge for window cleaning.

Management Fees

66. Mrs Savage quoted from Managing Agent's letter dated 7th October 2013 to her saying "We offer you a 'hands on' personal service and to conduct fortnightly inspections to ensure that the property is maintained to the best possible standard". However, she said she had seen no evidence of any works being carried out or visits made. The gutters were broken, a ridge tile was missing and tiles had slipped. There had also been drainage problems which had not been addressed.
67. She further referred to the demands which she had received for Service Charges which were incorrect as they did not take account of either the Tribunal's Decision or the amount that should have been credited to her under the terms of the Lease.
68. She submitted that the Property had not been managed competently.

Application under Section 20C Landlord and Tenant Act 1985 and for Reimbursement of Application Fee

69. Mrs Savage applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs of these proceedings shall not be charged to the Service Charge and for the reimbursement of fees. She said that neither Elyar Properties Ltd or its representatives had replied to any of her letters regarding the Administration Fees or the Service Charge and had made no attempt to answer her Statement of Case in respect of the Service Charges.

Application under Paragraph 13 Tribunal Procedure Rules 2013

70. Elyar Properties Ltd had failed to comply with both the County Court and Tribunal Orders. They had failed to comply with Directions by not serving a Statement of Case and not providing any evidence such as contracts, invoices, receipts, certificates, policies, reports or any documentation. They had also failed to attend the hearing. She submitted that Elyar Properties Ltd had behaved unreasonably.
71. In oral evidence she said that her costs included the photocopying in preparing of the Bundle, travelling costs in attending the hearing and loss of earnings as she had recently started a new job and so could not take holiday time to prepare the Bundle and attend the hearing.

Service Charges Determination

72. The Tribunal considered what it had seen at the Inspection and the evidence presented by Mrs Savage and dealt with each item of the Service Charge in turn. These are adversarial proceedings in which the Elyar Properties Ltd and its representatives have chosen not to make any representations or submit any evidence. The Tribunal must therefore base its decisions on the evidence before it and its inspection of the property.

Accountancy Fees

73. In the experience of the Tribunal members the amount charged for the Accountancy Fees of £315.00 and £320.00 for the years ending 31st March 2016 and 2017 respectively were reasonable and payable. The accounts appeared to comply with the Lease which requires an audit. Any further audit would only increase the cost.

Building Insurance

74. With regard to the Building Insurance for the years ending 31st March 2016 and 2017 no evidence was adduced by Elyar Properties Ltd or its representatives to show that they went into the market place to find competitive quotations. The Tribunal found from the documentation submitted that the Agent was acting through a related company rather than through an independent broker. In addition, no account was given of commission received.
75. In the absence of such evidence of an arm's length transaction, the Tribunal considered the alternative quotations provided by Mrs Savage. The quotation of £457.00 obtained by Mr and Mrs Watson in November 2014 from Bona Fide Property Insurance Agents, which had been accepted by the previous Tribunal was now dated. The quotations obtained by Mrs Savage were not sufficiently specific to be relied upon. There was a lack of detail in relation to both cover and past claims.
76. The Tribunal found that in the knowledge and experience of its members the insurance premium charged for both years was the highest they would expect for the Property within the range of reasonableness, taking into account that the Broker was receiving commission by way of payment for the work in arranging the cover. On this basis it determined the Building Insurance of £1,591.53 and £1,606.09 for the years ending 31st March 2016 and 2017 respectively were reasonable and payable.

Common Parts Cleaning and Gardening

77. The Tribunal noted that there was a schedule for cleaning and gardening completed by Andrei. The schedule appeared to record as follows:
26th September – internal clean and removal of weeds
11th October – internal clean
17th October – internal clean
24th October – internal clean

31st October – internal clean and cleared leaves
7th November – internal clean
16th November – internal clean

78. The Tribunal deduced from this that the Common Parts were intended to be cleaned each week with a general tidying of the grounds once a month. However, no work had been recorded for the period for the weeks commencing 20th November, 27th November or 4th December. Taking this latter point into account the condition of the entrance, stairs and landing and the grounds around the Block was fair. Taking into account the current state of the Common Parts the Tribunal accepted that cleaning and gardening had taken place during the years 2016 and 2017. In the absence of evidence from either party the Tribunal considered that a contractor would allow for an hour a week at approximately £20.00 a visit giving an annual charge in the region of £1,000.00. Therefore, the charges of £1,145.00 and £1,119.96 for the years ending 31st March 2016 and 2017 respectively were determined to be reasonable and payable.

Drain & Gutter Clearance

79. There is no charge for drain or gutter clearance therefore no determination can be made in respect of them.

Common Parts and Electricity

80. The Tribunal found that without the invoices for the electricity for the Common Parts it could not verify the charge. Nevertheless, the Tribunal found that in the knowledge and experience of its members, taking into account the number of lights, the push button system of operation and the emergency lighting the actual charge of £127.20 and £167.65 for the years ending 31st March 2016 and 2017 respectively were reasonable and payable.

Health and Safety & Fire Risk Assessment

81. There was no evidence that a further annual check had taken place following the Reports in 2015. On all other items there was some evidence that a cost had been incurred in that a copy of the accounts was provided, an insurance schedule (although not current) was included, the electricity continued to be connected and so on. However, there was no documentation or physical evidence of an annual Health and Safety Check. Without such evidence the Tribunal did not consider the charge reasonable.

General Repairs & Maintenance

82. There was no charge for the item General Repairs and Maintenance in the account for the actual costs for 2016.
83. The Tribunal found from the account of the inspection and the Reasons provided by the previous Tribunal the meter housing door had been repaired and the drain cover had been replaced. No evidence such as an invoice had been provided for this item. Nevertheless, the Tribunal found that the sum of

£163.97 charged for General Repairs and Maintenance in the account for the actual costs for 2017 was in the knowledge and experience of its members commensurate with the cost of repairing the door and renewing the drain cover.

84. On the understanding that the cost was for these works the Tribunal determined that amount of £163.97 for the year ending 31st March 2017 was reasonable and payable.

Window Cleaning

85. There is no charge for window cleaning therefore no determination can be made in respect of them.
86. The Tribunal noted under Part V paragraph (E) vi of the Schedule to the Lease that the windows were demised and at Part III paragraph 13 it was for the Lessee to clean the windows; therefore, no estimated or actual charge should be levied for this item.

Management Fees

87. The Tribunal found that the Managing Agent collected the rents, had arranged for a person to clean the Common Parts, instructed a contractor to undertake two repairs in 2017 and had paid the electricity bills.
88. The insurance had been placed by a related company to the Managing Agent. The Tribunal using the knowledge and experience of its members and in the absence of evidence to the contrary, considered the level of premium included a payment by way of commission for the brokerage services. Therefore, the cost of obtaining insurance should not be included in the Management Fee.
89. The Managing Agent also sent out demands for the Service Charge. However, these were found by the Tribunal to be incorrect and their manner of pursuing payment of the erroneous charges oppressive. In addition, the Agent have failed to communicate adequately with the Tenants as evidenced by the Managing Agents conduct in respect of these and previous proceedings.
90. The Tribunal determined that for the limited work the Managing Agent had undertaken a unit charge of £50.00 per annum to be reasonable for the years ending 31st March 2016 and 2017.

Summary

91. The Tribunal determines:
- the reasonable costs incurred for the year ending 31st March 2016 to be £3,428.73 of which Mrs Savage's share is £693.74.
 - the reasonable costs incurred for the year ending 31st March 2017 to be £3,627.67 of which Mrs Savage's share is £725.53 as itemised in the table below.

Determination of the reasonable Actual Service Charge Expenditure for the years ending 31st March	2016	2017
	£	£
Accountancy Fees	315.00	320.00
Building Insurance	1,591.53	1,606.09
Common Parts Cleaning and Gardening	1,145.00	1,119.96
Drain Clearance	0	0
Common Parts Electricity	127.20	167.65
Health & Safety Fire Risk Assessment	0	0
General Repairs & Maintenance	0	163.97
Gutter Clearance	0	0
Internal Redecorations	0	0
Management Fees	250.00	250.00
Window Cleaning	0	0
Total	3,428.73	3,627.67
Charge per flat ÷ 5	685.74	725.53

Application under Section 20C Landlord and Tenant Act 1985 and for Reimbursement of Application Fee

92. Mrs Savage applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs of these proceedings shall not be charged to the Service Charge and for the reimbursement of the Application Fee.
93. The Tribunal is of the opinion that the Respondent could recover its costs for these proceedings through the service charge under paragraph 13 of the Schedule of the Lease.
94. In considering whether it is just and equitable to make an order the Tribunal referred to the case of *Conway & Others v Jam Factory Freehold Limited* [2013] UKUT 0592 (LC).
95. The Tribunal noted that the most of the Service Charge for the years in issue had been determined to be reasonable by the Tribunal. However, against this the Tribunal weighed the conduct of Elyar Properties Ltd and its representatives.
96. Firstly, the Tribunal found that Elyar Properties Ltd and its representatives had not complied with the Tribunal Decision of the 26th February 2016 nor had it communicated with Mrs Savage to explain its Service Charges for the years 2016 and 2017. The Tribunal was of the opinion that if Elyar Properties Ltd had done so it would not have been necessary for the County Court to transfer the matter to the Tribunal. Indeed, the whole proceedings could have been avoided.
97. Secondly, the Tribunal found that Elyar Properties Ltd and its representatives had not complied with any of the Tribunal's Directions and had taken no part in the tribunal proceedings. As a result, the Tribunal cannot see how Elyar

Properties Ltd could have incurred any costs with regard to them. The Tribunal therefore makes an Order under section 20C

98. Because the Tribunal is of the opinion that these tribunal proceedings could have been avoided it also orders that Elyar Properties Ltd reimburse the hearing Fee of £200.00 within 28 days of receipt this Order.

Application under Paragraph 13 of the 2013 Rules

99. The Residential Property Tribunal has a 'no costs' jurisdiction. This means that the general principle is that each party pays its own costs and the Tribunal cannot make an order for one party to pay the costs of another irrespective of whether a determination is made in favour of either party.
100. The exception to this is under rule 13 of the Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013 which states:
The Tribunal may make an order in respect of costs only-
(b) *if a person has acted unreasonably in bringing, defending or conducting proceedings*
101. In relation to the Application under paragraph 13 the Tribunal applied the three-stage test in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 considering:
- (i) Whether the Applicant had acted unreasonably, applying an objective standard;
 - (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
 - (iii) If so, what should the terms of the order be?
102. The Tribunal also took into account the meaning of "unreasonable" in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:
- "Unreasonable" means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable.*
103. In considering whether there had been unreasonable conduct the Tribunal first considered whether Elyar Properties Ltd and/or its representatives had acted unreasonably.

104. The failure to recognise and comply with the Tribunal Decision of the 26th February 2016 and to continue to demand the original sums and administrative charges, notwithstanding that Decision, and then to fail to make any effort to defend the charges in these proceedings is in the opinion of the Tribunal “*conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case*”.
105. The Tribunal therefore finds that Elyar Properties Ltd and/or its representatives have acted unreasonably. The Tribunal felt that Elyar Properties Ltd must have been aware that the effect of its actions was to cause the Mrs Savage to incur expense.
106. As the previous conduct of Elyar Properties Ltd indicated that it would not respond to any decision or order from the tribunal Mrs Savage was obliged to prepare and serve 5 copies of the bundle (four for the Tribunal and one for Elyar Properties Ltd). In the absence of any communication in respect of the proceedings Mrs Savage requested a hearing to present her case which she attended. The tribunal assessed her costs as being:
- | | |
|--|----------------|
| Photocopying costs
(117 pages per Bundle @5p a page = 5.85 x 5 Bundles) | £29.25 |
| Postage costs
(Tribunal 9.80; Elyar Properties Ltd £4.92) | £14.72 |
| Time costs
(12 Hours @ £7.50) | £90.00 |
| Allowance for miscellaneous costs
(Travelling, telephone etc) | £6.03 |
| Total | £140.00 |
107. Therefore, the Tribunal Orders that costs of £140.00 be paid to Mrs Savage by Elyar Properties Ltd within 48 days of the receipt of this Decision by the parties.

Amount Payable by Mrs Savage

108. Taking in to account the Tribunal Decision of the 26th February 2016 the Tribunal Decides that that amount of Service Charge to be paid by Mrs Savage based on the actual costs determined to be reasonable is as follows:

109. Service Charge Payable	
For the year ending 31 st March 2014 (5 months)	£228.37
For the year ending 31 st March 2015	£517.38
For the Year ending 31 st March 2016	£685.74
For the year ending 31 st March 2017	<u>£725.53</u>
Total payable	£2,385.39
Less	
Amount paid by Mrs Savage	£1,590.00
Tribunal Fees to be reimbursed:	
Application Fee June 2015	£125.00

Hearing Fee 11 th January 2016	£195.00
Hearing Fee 7 th December 2017	£200.00
Costs to be paid	£140.00
Total deduction	£2,250.00

Total to be paid by Mrs Savage **£135.39**

110. The Tribunal makes no determination regarding the estimated costs for the year ending 31st March 2018 as these are not part of the claim transferred to the Tribunal.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.