FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT AT WANDSWORTH, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal Case Reference	:	**LON/00AY/LSC/2019/0479**
Court claim number	:	**F40YX312**
HMCTS Code		**V:CVPREMOTE**
Property	:	**22 Century House & Parking Space 19 245 Streatham High Road, London, SW16 6ER**
Applicant/Claimant	:	**Century House (Freehold) Ltd**
Representative	:	**Sam Phillips (Counsel), instructed by PDC Law**
Respondent/Defendant	:	**Dravidian Investment Ltd**
Representative	:	**Dr Jay Chelliah (Director)**
Tribunal members	:	**Judge Robert Latham** **Aileen Hamilton-Farey FRICS**
In the county court	:	**Judge Robert Latham (sitting as a District Judge of the County Court)**
Date of hearing	:	**16 September 2020**
Date of decision	:	**11 November 2020**

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we were referred are specified at [10] below.

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be: (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

Summary of the decisions made by the First-tier Tribunal

1. The following service charges are payable and reasonable:

(i) FRA and Health & Safety Works, demanded on 27 June 2017: £1,967.22;

(ii) Additional Fire Safety Works, demanded on 20 October 2017: £158.88;

(iii) Fire Safety Patrol Service, demanded on 20 October 2017: £1,568.25;

(iv) Service Charge for 2018/19, demanded on 22 June 2018: £2,133.90.

2. The administration charge which was demanded on 9 October 2017 is not payable as the demand was not accompanied by the requisite Summary of Rights and Obligations.

3. The Tribunal declines to make an order of costs against the Applicant under Rule 13(1)(b) of the Tribunal Rules.

Summary of the decisions made by the County Court

4. It is declared that the following service charges are payable:

(i) FRA and Health & Safety Works, demanded on 27 June 2017: £1,967.22;

(ii) Additional Fire Safety Works, demanded on 20 October 2017: £158.88;

(iii) Fire Safety Patrol Service, demanded on 20 October 2017: £1,568.25;

(iv) Service Charge for 2018/19, demanded on 22 June 2018: £2,133.90.

5. There be a money judgment for the Claimant in the sum of £5,828.25.

6. The Defendant's Counterclaim is dismissed.

7. The Defendant shall pay the Claimant costs of £7,367.60.

The Application

1. On 14 March 2019, Century House (Freehold) Limited ("the Landlord") issued proceedings against Dravidian Investments Limited ("the Tenant") in the Money Claims Centre claiming: (i) arrears of service charges in the sum of £9,551.41 pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"); (ii) administration charges of £250 pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"); (iii) contractual costs of £840; (iv) a declaration that the said sums are payable; and (v) contractual costs. The determination was sought pursuant to Section 81 of the Housing Act 1996 with a view to forfeiture. There is no claim for interest.

2. On 25 April 2019, the Tenant filed a Defence and Counterclaim. He admitted that the sum of £3,936.32 was payable. He counterclaimed for the sum of £2,850. On 26 July 2019, the Landlord filed a Reply and Defence to Counterclaim. On 12 December 2019, District Judge Jarzabkowski, sitting in the County Court at Wandsworth, transferred the case to this tribunal.

3. On 4 February 2020, Judge Nicol gave Directions. The Landlord was represented by Mr Fitzgibbon (Counsel); the Tenant Company by Dr Chelliah (a director). The Judge allocated the case to the Small Claims track. The Judge noted that there had been five previous proceedings involving the parties (see [21] - [24] below). The Judge was concerned that Dr Chelliah might not have sufficient understanding of the relevant legal principles and advised the Tenant Company to seek legal advice. He suggested that the two Counterclaims which had been filed in the County Court seemed to be misconceived. The Landlord stated that it intended to discontinue part of its claim, namely £3,854.55 in respect of window works. A reserve fund contribution for this had been included in the demand made on 22 June 2018 in respect of the 2018/9 Service Charge. Judge Nicol directed that each party should provide fresh statements of case.

4. The Landlord was directed to send the Tenant with a Statement of Case by 25 February together the relevant documents in support of the Claim. On 21 February 2020, the Landlord sent the Tenant its Statement of Case (at p.77-81 of the Bundle) which sets out the relevant terms of the lease and the basis of its claim. It exhibits (i) the lease; (ii) the Service Charge Budget for 2018/9; (iii) the relevant service charge demands which are accompanied by the requisite Summary Rights and Obligations; (iv) the previous tribunal decisions; (v) the service charge accounts for 2017/8; (vi) the pre-action correspondence; and (vii) a current service charge account which shows an outstanding balance of £7,595.02.

5. On 27 February, the Tenant sought to strike out the Landlord's Case on the ground that it had failed to comply with the Directions. Despite what was specified in the Directions, the Tenant did not send a copy of this application to the Landlord. When the tribunal contacted the Landlord, it sent a further copy of its bundle to the Tenant. On 11 March, the Landlord confirmed that it had done so.

6. On 16 March, the tribunal received two application notices from the Tenant. The first (at p.277) was issued under "S19(a)(b), S21 and S22 LTA 1985". The Tenant stated that it wished to inspect the accounts in order to quantify the appropriate quantum. The service charge accounts had already been disclosed. The Second (at p.279) was issued under Rule 31.11, 31.12 and 31.16 of the Civil Procedure Rules 1998. Rule 31 relates to disclosure and inspection. The Tenant suggested that the Landlord had failed to comply with paragraph 5 of the Directions.

7. On 17 March (at p.75), Judge Carr, a procedural judge, determined the Tenant's applications. She was satisfied that the Tenant had received the Landlord's documents. She declined to strike out the Landlord's case. She refused the application for disclosure on the grounds that the Landlord had complied with the Directions. She extended the timetable.

8. The Tenant was directed to send the Landlord a Statement of Case setting out all items disputed with the reasons why they are disputed, and, where applicable, any alternative sums offered by the Tenant; it should also include any Counterclaim. The Tenant was further directed to serve any documents upon which it sought to rely. The Tenant has served two documents: (i) "Respondent's Statement" dated 16 March 2020 (at p.271); and (ii) "Inspection of Accounts request from 2014 to 2020" (at p.316). These were accompanied by a number of documents.

9. The Landlord was directed to send the Tenant a Statement of Case in Response, including its defence to any counterclaim. It is apparent that the Landlord was not entirely sure of the case that it was required to answer. On 12 May (at p.22) the Landlord served a Statement of Case in Reply which sought to address four documents: (i) the Tenants Defence and Counterclaim, dated 25 April 2019 (at p.56-71); (ii) the Tenant's "Additional Counterclaim" which Dr Chelliah had produced at the CMC on 4 February 2020 (at p.263-269); (iii) "Respondent's Statement" dated 16 March 2020 and (iv) "Inspection of Accounts request from 2014 to 2020".

10. The Landlord has filed an extensive Bundle of Documents totalling 377 pages. On 18 August, Dr Chelliah provided four additional documents. On 10 September, the Landlord submitted a Site Visit Report relating to an inspection on 14 July.

11. On 15 September, the Landlord served a Statement of Costs seeking contractual costs pursuant to Clause 3(9) of the Lease in the sum of £7,367.60. The Tenant responded with its own Costs Claim totalling £16,867.50.

12. The County Court transferred the proceedings to this Tribunal under the Deployment Scheme. The effect of this is:

(i) The Tribunal now administers the whole case on behalf of the County Court, and Judge Latham, sitting as a District Judge of the County Court ("DJ Latham"), is entitled to make directions having regard to the provisions of the Civil Procedure Rules 1998 (the "CPR").

(ii) Judge Latham and Ms Hamilton-Farey, sitting as a First-tier Tribunal ("FTT"), determine any issue relating to service charges and administration charges pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). This jurisdiction is governed by the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules").

(iii) DJ Latham determines the issues which fall outside the traditional jurisdiction of the FTT, namely the claim for contractual costs.

DJ Latham and the FTT have had regard to the decision of the Upper Tribunal ("UT") in *Avon Ground Rents Limited v Childs ("Avon Ground Rents")* [2018] UKUT 204 (LC); [2018] HLR 44, and identify the decisions taken respectively by DJ Latham and the FTT.

The Hearing

13. Mr Sam Phillips (Counsel) appeared on behalf of the Applicant Landlord. He provided a Skeleton Argument which helpfully summarised the Landlord's case. He adduced evidence from Mr Christopher Langan, a director of the Landlord Company, and Mr Gaji Ullah, the Head of Building Management for Houston Lawrence Management ("HL M") the managing agents.

14. Mr Langan is a solicitor who was been a lessee for some 32 years. He has not occupied his flat for some 30 years. We accept his evidence without hesitation. Mr Ullah has only been employed by HLM since December 2017. He thus had little direct knowledge of the issues in dispute. However, he was able to speak to the records kept by HLM.

15. Dr Chelliah appeared for the Tenant Company. He is a director. He also provided a Skeleton Argument which summarised his submissions. We gave him some 1.5 hours to develop his arguments. He indicated that he

considered this to be inadequate. We are satisfied that he had sufficient time to present his case.

16. Dr Chelliah is a scientist and lectures at the UCL. He and his partner have two children aged 19 and 21. Their family home is in Watford. Flat 22 is on the second floor and has one bedroom. It is his London base. Dr Chelliah raised a number of procedural issues rather than address the substantive issues in dispute. We did not find him a satisfactory witness. He suggested that both Mr Langan and Burns & Co (the Landlord's accountants) were guilty of professional misconduct. Whilst it seems that Mr French, an aggrieved litigant in three sets of tribunal proceedings, made complaints to their professional bodies, there is no evidence that these were upheld.

17. At the end of the hearing, there was a short break before the Tribunal heard the applications for costs. The tribunal explained to Dr Chelliah the difference between the Landlord's entitlement to costs under the lease and his application which would be treated as an application under Rule 13(1)(b) of the Tribunal Rules. The Tribunal stressed the high threshold for a costs order and referred to the decision in *Willow Court Management Company* [2016] UKUT 290 (LC). Both parties wanted the tribunal to determine the application at the hearing. The FTT offered the Tenant the opportunity to make further written submissions, but Dr Chelliah declined this offer.

18. During the hearing, there were occasions when a party lost contact. The Tribunal ensured that the hearing was suspended until both Mr Phillips and Dr Chelliah had re-established contact.

The Background

19. Century House is a six storey Building which was built as commercial premises in the 1930s. In the 1980s, it was converted into 33 residential Buildings. The Tenant derives its interest from the Lease, dated 18 June 1987 which was granted by Cooks Developments Limited to Dr Chelliah and Alison Hunt. On 5 June 2007, the tenants transferred the lease to the Respondent Company which is incorporated in Cyprus.

20. There has been a history of neglect at this Building. In about 2014, the landlord company was put into administration. The Administrator appointed HLM to manage the Building. On 28 February 2014, the Applicant Company acquired the freehold interest. The Company is owned by 29 of the 33 leaseholders. This includes the Tenant. There have been a number of recent decisions which are relevant to this application. Matters were brough to a head by the urgent fire precautions required in the aftermath of the Grenfell fire tragedy in June 2017.

21. LON/00AY/LDC/2017/0123 (at p.145-151): On 4 December 2017, Ian Holdsworth had granted dispensation pursuant to section 20ZA of the 1985 Act in respect of the fire watch service which were to be provided by City Security Services at a cost of £4,200 pw + VAT. On 20 October 2017 (p.160), the Landlord had invoiced the Tenant £1,572.66 for these works. The Tenant was a party to these proceedings and was represented by Dr Chelliah at the hearing on 29 November. The application was also opposed by Mr Angus French and Mr Toby French. The FTT noted that several Fire Risk Assessments since 2013 had identified serious defects that required attention. On 19 September 2017, the London Fire Brigade carried out an inspection. On 11 October 2017, the London Fire Brigade told the Landlord that if a waking fire watch was not instigated, it would serve a prohibition order. The Landlord was given no time in which to carry out the statutory consultation. The Landlord obtained two estimates and selected the lowest at £5,000 per week (inc VAT). Dr Chelliah argued that there were more effective means of monitoring the safety of the building. He was also dissatisfied with the performance of HLM. Whilst this decision only related to the issue of dispensation, the FTT was required to consider the issue of prejudice to the tenants, and had regard to the two estimates obtained by the Landlord. The FTT confirmed that the charges were comparable to those made for similar fire patrols at nearby at-risk properties.

22. LON/00AY/LDC/2017/0122 (p.137-144): On 12 December 2017, Ian Holdsworth had granted dispensation pursuant to section 20ZA of the 1985 Act in respect of the fire safety works which were required to comply with an enforcement notice served by the London Fire Brigade on 26 October 2017. On 27 June 2017 (at p.153), the Landlord had invoiced the Tenant £1,970.05 for these works. The Tenant was a party to these proceedings and was represented by Dr Chelliah at the hearing which also occurred on 29 November. The application was also opposed by Mr Angus French and Mr Toby French. The Landlord had obtained two estimates for the works and had decided to accept the lower estimate submitted by Peter Burton & Co Ltd in the sum of £78,030 + VAT. Dr Chelliah expressed dissatisfaction with the manner in which HLM had conducted the consultation and was concerned about the scope of the proposed works. Whilst this decision only related to the issue of dispensation, the FTT was required to consider the issue of prejudice to the tenants, and had regard to the two estimates obtained by the Landlord.

23. On 10 September 2018, the County Court had made a money judgment in favour of the Landlord against the Tenant in the sum of £2,060.72.

24. LON/00AY/LSC/2018/357 (p.232-235): On 23 October 2018, Judge Nicol struck out the Tenant's challenge to service charges for 2016-2020 as it had not disclosed these previous proceedings between the parties. The Judge restricted the Tenant from issuing further proceedings without first obtaining the permission of the tribunal. Dr

Chelliah represented the Tenant at the Case Management Hearing. He conceded that these decisions related to some of the same service charges that he was seeking to challenge. The Judge was critical of the untruthful statement that Dr Chelliah had made in the application form on behalf of the Tenant.

25. LON/00AY/LSC/2019/0046 (p.164-196): On 17 November 2019, the FTT (Judge Seifert, Mr Geddes and Mr Packer) gave its decision on an application brought by Mr Angus French (Flat 24). The hearing extended over three days. Mr Phillips stated that the FTT had considered four lever arch files of papers. The FTT inspected the Building. The challenges related to the service charge years 2013/4 to 2017/8. Two sections of the decision are of particular relevance:

(i) At [194] to [202], the FTT considered the FRA and Health & Safety Works for which the Tenant has been charged £1,970.05. Mr French complained about the quality of the works. The Landlord responded that the works had been approved by the London Fire Brigade. The FTT made a modest reduction of £114.90 in respect of panels fixed over the electricity meters which it considered were not fit or purpose.

(i) At [203] to [207], the FTT considered the Fire Safety Patrol Service for which the Tenants has been charged £1,568.25. Mr French argued that the fire patrols were not necessary. The FTT rejected this contention and found that the sum demanded was reasonable and payable.

The Lease

26. The Lease is dated 18 June 1987 (at p.13). The Tenant's service charge contribution is 2.57%. Mr Phillips has highlighted the following provisions:

(i) Clause 4(4): The Tenant hereby covenants with the Lessors and with and for the benefit of the Flat Owners that throughout the term the tenant will:- Pay the Interim Charge and the Further Interim Charge (as appropriate) and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto all such Charges to be recoverable as rent in arrear.

(ii) Clause 1(3) of the Fifth Schedule - The Service Charge: "the Interim Charge" means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment.

(iii) Clause 3 of the Fifth Schedule - The Service Charge: The first payment of the Interim Charge (on account of the Service Charge for the Accounting Period during which this Lease is executed) shall be

made on the execution hereof and thereafter the Interim Charge shall be paid to the Lessors in advance on the Twenty-fourth day of June in each year and in case of default the same shall be recoverable from the Tenant as rent in arrear.

(iv) Clause 4 of the Fifth Schedule - The Service Charge: In the event that the cost to the Lessors of performing the obligations of the Lessors hereunder (to the extent that the same are ultimately recoverable from the Tenant) shall at any time during the Accounting Period exceed the Interim Charge then the Lessors shall be entitled by notice in writing served upon the Tenant to require payment by the Tenant to the Lessors within fourteen days thereafter of a further Interim Charge ("The Further Interim Charge") in an amount not exceeding one hundred per centum of the deficiency in question.

(v) Clause 6 of the Fifth Schedule - The Service Charge: If the Service Charge in respect of any Accounting Period exceeds the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus from previous years carried forward as aforesaid then the Tenant shall pay the excess to the Lessors within twenty-eight days of service upon the Tenant of the Certificate referred to in the following Paragraph and in case of default the same shall be recoverable from the Tenant as rent in arrear.

(vi) Clause 3(9): To pay to the Lessors as arrears of rent all costs charges and expenses including Solicitors' Counsels' and Surveyors' costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such costs charges and expenses of and incidental to the preparation and service of a notice under the said Sections and of and incidental to the inspection of the Demised Premises and the drawing up of Schedules of Dilapidations such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

The Issues to be Determined

27. The FTT is required to determine the following issues:

(i) FRA and Health & Safety Works: £1,967.22;

(ii) Additional Fire Safety Works: £158.88;

(iii) Fire Safety Patrol Service: £1,568.25;

(iv) Service Charge for 2018/19: £2,175.77;

(v) The administration fee of £250;

(vi) The Tenant's Counterclaim: £2,850. The parties agreed that the FTT should treat this as a set-off against the demand for service charges;

(vii) The Tenant's application for costs pursuant to Rule 13(1)(b) of the Tribunal Rules.

28. DJ Latham is required to determine the following issue:

(viii) The Landlord's claim for contractual costs pursuant to Clause 3(9) of the Lease.

29. Mr Phillips confirmed that he is not seeking to recover the following sums which are specified in the Landlord's Statement of Case as these are subsumed in the claim for contractual costs: (i) legal costs: £840; (ii) Court fee: £532.07; and (iii) fixed commencement costs: £100.

30. In his Skeleton Argument, Dr Chelliah raised a number of procedural points which the FTT will address briefly:

(i) The Landlord had failed to comply with the Directions. The FTT disagrees.

(ii) The Landlord has failed to take the requisite steps to withdraw its claim of £3,844.55 in respect of the reserve fund contribution. The FTT disagrees. No formal step was required by the Directions.

(iii) The Landlord has failed to comply with the Section 20 Consultation Requirements. The FTT disagree. None of the decisions which we have discussed have been appealed.

(iv) The Landlord has failed to comply with its disclosure and inspection obligations. Reference is made to CPR 31. The FTT disagrees. The Landlord has complied with the Directions given by the tribunal.

(v) The Landlord has failed to comply with Section 21B of the Act. The FTT disagrees. The relevant service charge demands have been accompanied by the requisite Summary of Rights and Obligations.

(vi) Reference is made to a schedule headed "Analysis of the Fire Brigade Enforcement Notice, dated 26 October 2017" (at p.296-298) and the further schedules at p.299-306 and p.307-309. It would appear that these were prepared for the FTT in November 2017 and do not seem to be relevant to the current application. Dr Chelliah suggest that works totalling £58,670 were not required. This argument has been

rejected. Dr Chelliah referred the FTT to the decision of *JD Cleverly Ltd v Family Finance Ltd* [2010] EWCA Civ 1477. His argument seeks to be that the landlord has been obliged to provide a copy of every invoice before service charges become payable. The FTT does not accept this argument.

(vii) Dr Chelliah refers to CPR 33.6 and suggests that photographic evidence has not been adduced in accordance with this rule. There is no substance to this complaint.

(viii) Dr Chelliah states that the Inspection carried out by the FTT in LON/00AY/LSC/2019/0046 showed that the works were not fit for purpose. The FTT made a modest reduction in respect of one item. A Site Visit Report dated 14 July 2020 (at p.259) shows that the Building is generally in a "fair" or "good" condition.

(ix) Dr Chelliah suggests that the Landlord perverted the course of justice by failing to include four documents in the Bundle for the hearing. Dr Chelliah provided these documents to the tribunal on 17 August 2020. They bear little relevance to the issues which the FTT is required to determine.

(x) Dr Chelliah refers to Rule 9 if the Tribunal Riles and suggests that the FTT should strike out the claim. He suggests that the Landlord has failed to cooperate with the tribunal and that the manner in which it has conducted the proceedings has been frivolous, vexatious or an abuse of process. There is no substance to these complaints.

Issue 1 for the FTT: FRA and Health & Safety Works: £1,967.22

31. On 27 June 2016 (p.153), HLM issued the Tenant with a demand for "FRA & Health and Safety Works" in the sum of £1,970.17. The demand was accompanied by the requisite Summary of Rights and Obligations (at p.154). On 23 February 2018 (p.155), HLM informed the tenant that there was a rebate of £2.83. The sum due is therefore £1,967.22.

32. Dr Chelliah (at p.316) disputes that this sum is payable. He states that the quantum is incorrect. He refers to issues which he raised on 7 November 2017 and 9 February 2018.

33. These works were considered by the FTT in LON/00AY/LDC/2017/0122. Whilst this decision only related to the issue of dispensation, the FTT was required to consider the issue of prejudice to the tenants, and had regard to the two estimates obtained by the Landlord. These works were also considered by the FTT in LON/00AY/LSC/2018/357. The FTT made a modest reduction of £114.90. Apart from this, the FTT found the service charge to be

reasonable and payable. Mr Phillips informed the tribunal that the sum charged to the Tenant reflected this reduction. Whilst the Tenant was not a party to this application, this is a decision to which this Tribunal gives considerable weight. Extensive material was put before the FTT. The FTT visited the Building. Dr Chelliah has adduced no evidence to persuade us that this decision was wrong. The FTT is satisfied that this sum is payable and reasonable.

Issue 2 for the FTT: Additional Fire Safety Works: £158.88

34. On 20 October 2017 (p.157), HLM issued the Tenant with a demand for "Fire Safety Works (Additional)" in the sum of £337.92. The demand was accompanied by the requisite Summary of Rights and Obligations (at p.158). On 25 October 2017 (p.159), HLM informed the tenant that there was a rebate of £179.04. The sum due is therefore £158.88. Dr Chelliah (at p.317) suggests that the quantum is incorrect. The FTT is satisfied that this sum is payable and reasonable.

Issue 3 for the FTT: Fire Safety Patrol Service: £1,568.25

35. On 20 October 2017 (p.160), HLM issued the Tenant with a demand for "Fire Safety Patrol Service; Period 28/09/2017–22/12/2017" in the sum of £1,572.66. The demand was accompanied by the requisite Summary of Rights and Obligations (at p.161). On 25 January 2018 (p.159), HLM informed the tenant that there was a rebate of £4.41. The sum due is therefore £1,568.25.

36. Dr Chelliah (at p.318) argues that the quantum is incorrect. He states that the Landlord failed to take any expert advice and that the Safety Patrol was not required.

37. These works were considered by the FTT in LON/00AY/LDC/2017/0123. Whilst this decision only related to the issue of dispensation, the FTT was required to consider the issue of prejudice to the tenants, and had regard to the two estimates obtained by the Landlord. These works were also considered by the FTT in LON/00AY/LSC/2018/357. They found the service charge to be reasonable and payable. Dr Chelliah has adduced no evidence to persuade us that this decision was wrong. The FTT is satisfied that this sum is payable and reasonable.

Issue 4 for the FTT: Service Charge for 2018/19: £2,175.77

38. On 22 June 2018 (p.134), HLM issued the Tenant with a demand for "Service Charge; Period 01/07/2018-30/06/2019" in the sum of £2,175.77. The invoice also included a reserve fund contribution of £3,854.55 for "Windows Replacements". The Landlord is not pursuing

this element of its claim. The demand was accompanied by the requisite Summary of Rights and Obligations (at p.135).

39. The Service Charge Accounts are now available (at p.240). There was a surplus of £41.87. The Landlord is therefore only seeking a finding in the net sum of £2,133.90.

40. During the course of his evidence, Ms Hamilton-Farey asked Dr Chelliah to specify the grounds upon which the Tenant was challenging this claim. Dr Chelliah responded that he was not challenging this sum. The FTT is therefore satisfied that the sum of £2,133.90 is both payable and reasonable.

Issue 5 for the FTT: The administration fee of £250

41. On 9 October 2017 (at p.207), Property Debt Collection Limited ("PDCL") sent the Tenant a Pre-Action letter in respect of outstanding service charges of £2,653.94. This included an administration fee of £250. This sum had first been demanded on 27 June 2017 (see p.153). The FTT was informed that HLM would have sent a further letter before the debt would have been escalated to PDCL. That correspondence was not in the bundle.

42. This demand was not accompanied by the requisite Summary of Rights and Obligations required by Schedule 11, paragraph 4 of the 2002 Act. This defect has not been remedied and this sum is therefore not payable.

Issue 6 for the FTT: The Tenant's Counterclaim: £2,850

43. The Tenant's Counterclaim is based on an invoice, dated 28 February 2018 (at p.290). The parties agreed to treat this as a Set-Off. The invoice is for work performed by Dr Chelliah between 26 July 2017 and 17 February 2018 in respect of the fire safety works. He asserts that there was a contract between the Tenant Company and the Landlord Company for him to be remunerated for his services. The invoice is headed "Details as follows in Accordance with the UK Consumer Act 2015". Dr Chelliah argued that there was an intention to create legal relations and consideration for the contract. He asserts that as a result of his intervention, he saved the Landlord substantial sums of money and that he ensured that the builders remedied defective works. The Landlord responds (at p.233) that the first time that it was aware of this claim was when the Tenant filed its Defence and Counterclaim on 25 April 2019 (at p.56).

44. The FTT is satisfied that this claim is without foundation. There is no evidence that there was any contract between the Landlord and the Tenant as alleged by Dr Chelliah. He has produced no evidence to

support his claim. His involvement with these works was purely voluntary. Given his antagonism towards the Landlord and its directors, it is most improbable that they considered his involvement to be constructive.

Issue 7 for the FTT: The Tenant's application for costs

45. Dr Chelliah claims costs in the sum of £16,867.50. The FTT informed him that the Tenant had no contractual right under its lease to claim costs. This tribunal is normally a no costs jurisdiction. Costs can only be recovered under Rule 13(1)(b) of the Tribunal Rules on the grounds of unreasonable conduct in bringing or conducting proceedings. The Upper tribunal has set a high threshold for such conduct in *Willow Court Management Company*. Dr Chelliah claims £12,500 for his own time charged at £200 per hour. £2,500 is claimed for attending the hearing which is the same sum charged by Mr Phillips. Dr Chelliah claims £3,045 for a legal researcher charged at £150 ph and £1,472.50 for administration charged at £85 ph. He stated that the legal researcher was Suffian Hakim, a law student; administration was provided by Fatima Atrach. No invoices have been provided. Dr Chelliah stated that these sums had been paid in cash. The FTT considers that it is most unlikely that these sums have been paid. Dr Chelliah's charge out rate is manifestly unreasonable. Mr Phillips noted that the rate specified by CPR PD 46.3.4 is £19 ph.

46. Dr Chelliah has not satisfied the FTT that there has been any unreasonable conduct by the Landlord in bringing these proceedings or in the conduct of the same. Dr Chelliah has not paid any of the service charges albeit that he admitted in his defence that the sum of 3,936.32 was payable. The Landlord has complied with the Directions. In their Statement of Case in Response, the Landlord has done its utmost to seek to address the issues raised by the Tenant (see [9] above).

Issue 8 for DJ Latham: The Landlord's claim for contractual costs

47. Mr Phillips applies for costs pursuant to Clause 3(9) of the Lease. The Judge is satisfied that these proceedings were brought in contemplation of forfeiture. This is expressly stated in the Claim Form (see [1] above).

48. On 15 September, PDC Law provided a Schedule of Costs in the sum of £7,367.60 (inc VAT) using Form N260. The total costs claimed are:

Court Fees:	£ 200.00
Solicitors' Costs:	3,098.00
Counsel's Fees:	2,950.00
VAT:	1,119.60
Total:	£ 7,367.60

49. In assessing this claim for contractual costs, the Judge has had regard to *Church Commissioners v Ibrahim* [1997] EGLR 13. An order for the payment of costs of proceedings by one party to another is always discretionary (section 51 of the Supreme Court Act 1981). Where there is a contractual right to costs, the discretion should ordinarily be exercised so as to reflect the contractual rights. Thus, the fact that Judge Nicol allocated this case to the Small Claims Track does not override the contractual right to costs. Costs should be assessed having regard to CPR 44. CPR 44.5 provides that there is a rebuttable presumption that the costs have been reasonably incurred and are reasonable in amount. Paragraph 5(a) of Schedule 11 of the 2002 Act also comes into play.

50. Mr Phillips pointed out that the Landlord is owned by the lessees. If the Landlord does not recover its costs against the Tenant, these will be borne by all the other lessees through the service charge or by the shareholders of the Landlord Company.

51. Dr Chelliah argued that this was a small claim falling within CPR 27. He referred the Court to *Halborg v EMW Law LLP* [2017] EWCA Civ 793. This decision seems to have no relevance to the issue. Dr Chelliah also noted that the Landlord had abandoned its claim in respect of the reserve fund contribution towards works to the windows.

52. The Tribunal awards costs in the sum sought, namely £7,367.60. The Claimant has succeeded in its claim. The Counterclaim has been dismissed. The Court notes that the claim was before the County Court for nine months, before it was transferred to this tribunal. Although the claim was allocated to the Small Claims Track, this does not override the Landlord's contractual entitlement to costs. Most of the work has been carried out be a Grade D fee earner at a rate of £135 per hour. This is not unreasonable. Mr Phillip's brief fee is £2,500. This has been assessed on the basis of a day at court and a day's preparation. Mr Phillips stated that the preparation took considerably more than a day. The Tenant has formulated different cases on a number of occasions (see [4] above). The Landlord has sought to respond to all the points raised by the Tenant, however obtuse these have been. The Tenant has made serious allegations which have not been substantiated. The Court does not consider that the decision to discontinue the claim in respect of the reserve fund contribution, has added to the cost of the proceedings. The Landlord Company is owned by the lessees. It would be inappropriate for them to bear the cost of these proceedings.

Other Matters

53. The Tribunal asked Dr Chelliah whether the Tenant was applying for an order under section 20C of the Landlord and Tenant Act 1985 Act. He stated that he would leave this to the FTT. In the light of our findings,

we are satisfied that it would not be just and equitable in the circumstances for an order to be made.

Conclusions

54. Given that the FTT has made a decision regarding the Service Charges, the applicant is entitled to a judgment in that sum. A separate County Court order, reflecting this decision will be sent out on the Hand Down Date. This will include the declarations sought by the Landlord in respect of the service charges which the FTT have found to be payable and which have not been paid by the Tenant.

Judge Robert Latham
11 November 2020

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. 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 date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.

6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an

Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.