FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/LSC/2019/0003**
Property	**:**	**Flat 54 Mill View Tower, Mill View, Liverpool, L8 6AG**
Applicant	**:**	**Mr Marc Horn**
Respondent	**:**	**Tuscola FC101 Limited aka Rockwell (FC101) Limited**
Represented by		**Ms K Orr, J. B. Leitch, Solicitors and Ms R. Ackerley, Barrister**
Type of Application	**:**	**Section 27A and 20C, Landlord And Tenant Act 1985. Schedule11, paragraph 5a, Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	**:**	**Judge C. P. Tonge LLB, BA** **Mr I. James MRICS**
Date of Decision	**:**	**26 January 2022**
Date of Determination	**:**	**14 February 2022**

DECISION

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Background

1. The Tribunal first dealt this case on 17 July 2019. On that day the Tribunal inspected the block of flats that incorporates the property and held the first hearing in the case at the Civil and Family Court in Liverpool. It was necessary to adjourn that hearing part-heard but the Tribunal heard evidence on the matters that appeared to the Parties to be in contention at that time. The Tribunal issued a Decision and Directions, dated 17 July 2019 and served on the Parties shortly after that date "the Decision and Directions of 27 July 2019", this is annexed to the present Decision at annex 1, forming part of the present Decision.

2. The case has altered substantially since 27 July 2019. On 27 July 2019, the landlord was Tuscola FC101 Limited (registered as such with the Land Registry as of 29 January 2016). The landlord is now known as Rockwell (FC101) Limited. Counsel for the Respondent has indicated that this merely a change of name and the Parties to the case have not provided any evidence as to change of the landlord at the Land Registry.

3. Initially, the landlord was represented by Mr A Rowell, a director of the management agent, Regent Property Management Limited, who appeared before the Tribunal on 27 July 2019. There is now a Right to Manage Company in place, managing the property and Regent Property Management Company have not played any part in the last three hearings of this matter.

4. J. B. Leitch Solicitors were instructed on behalf of the Respondent and on 30 June 2021 a case management hearing was held via the Tribunal's' video platform (Judge Tonge sitting alone). Further Directions were issued. It had been necessary for the Tribunal to copy the evidential bundle for the newly instructed Solicitors as it appeared that there was then a lack of co-operation between the Respondent and Regent Property Management Limited, the management agent having left the Respondent with no case papers.

5. On 2 September 2021 the Tribunal (Judge Tonge sitting alone) issued third party Directions requiring Regent Property Management Limited to produce additional documents that the Respondent required so that it could proceed with the case.

6. A new agreed bundle of evidence was served and the hearing scheduled to continue via the Tribunals' video platform on 26 November 2021. The case was not concluded on this date and the Parties indicated that they would continue to negotiate towards a settlement of the outstanding matters.

7. An amended agreed bundle was compiled for the continuation of the hearing on 26 January 2022.

8. In the period between 26 November 2021 and 26 January 2022 a good deal of the matters in issue between the Parties had been agreed and the Tribunal was presented with a settlement agreement at the start of the hearing on 26 January 2022 and this attached to this Decision at annex 2(1). This was modified as a result of further negotiations between the Parties during 26 January 2022 and the final settlement agreement is annexed to the Decision at annex 2 (2). The Tribunal approves of this settlement agreement, but the agreement left two areas of dispute yet to be determined, namely accountant's fees over four years, being £4,200 and a grouping of issues termed as 'known defects' to the value of £10,331 (£10,391.40 according to the Tribunal's calculations).

The law

The Landlord and Tenant act 1985

section 27A, Liability to pay service charges: jurisdiction

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

(a)the person by whom it is payable,

(b)the person to whom it is payable,

(c)the amount which is payable,

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

(e)the manner in which it is payable.

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

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

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

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

(c)the amount which would be payable,

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

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

(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 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.

Section 18, Meaning of “service charge” and “relevant costs”.

(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, improvements 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 for which the service charge is payable.

(3)For this purpose—

(a)“costs” includes 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 or later period.

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 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.

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, or the First-tier Tribunal .....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—

in the case of proceedings before the First-tier Tribunal, to the tribunal;

(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.

Commonhold and Leasehold Reform Act 2002

Paragraph 5A of schedule 11, 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.

The relevant provisions of the lease

9. The lease for the property is at pages 336 to 361 in the last agreed bundle, second lever arch file.

10. The lease was made on 27 June 2013 and is for a term of 125 years, less 3 days, commencing 13 March 2012.

11. The tenth schedule, paragraph 1.2 requires a rent of £250 per year to be paid on the property, subject to review which had not taken place in the period relevant to this case. The block of flats contains 64 flats and each lease will have a similar provision so that rent of £16,000 should be collected by the management agent each year and be paid over to the landlord. There is nothing in the lease that would prevent this charge being demanded at the same time as the service charges and nothing to prevent a payment by a long leaseholder of both rent and service charges at the same time. This is relevant to the issue of four cash withdrawals being made from the service charge bank account.

12. The sixth schedule deals with maintenance expenses, paragraph 1 deals with all aspects of maintenance, repair and improvement of the block of flats. This would potentially cover improvement by installing a toilet in the care takers area (assuming that it was reasonable to do so) and improving and repairing lightning conductors.

13. The sixth schedule, paragraph 8, requires the Landlord to provide such heating and lighting apparatus as the landlord thinks and to maintain it. These two provisions of the lease taken together clearly cover the electrical reports that feature in the case.

14. The sixth schedule, paragraph 14, requires that a qualified accountant be employed "for the purpose of auditing the accounts in respect of Maintenance Expenses and certifying the total amount thereof for the period to which the account relates".

15. The seventh schedule deals with the proportion of expenses that a long leaseholder can be required to pay towards the expenses in the sixth schedule.

16. The seventh Schedule, paragraph 1.1, requires certified accounts to be prepared by an accountant of the maintenance expenses for the service charge year in question, that will then be binding upon landlord and tenant. The accounts are not required to be audited accounts.

17. The seventh schedule, paragraph 3.2, refers again to accounts and a certificate, the Tribunal determines that this refers to certified service charge accounts, not audited service charge accounts.

18. The Tribunal determines that overall, in relation to the type of account to be prepared, the lease requires certified accounts and not audited accounts. The reference to audit in paragraph 14 above relates to the way in which the accountant works through the accounting documents that have been prepared by the management agent on behalf of the landlord, but this falls short of requiring that the accountant provide audited accounts.

The hearing

19. Persons present at the inspection and hearing of 17 July 2019 and what happened during them are dealt with in annex 1.

20. Persons present during the hearing on 26 November 2021 were the Applicant, Mark Horn. For the Respondent, Ms Ackerley of counsel, with Ms K Edwards and Ms J. Michael.

21. Persons present during the hearing on 26 January 2022 were the Applicant, Mark Horn. For the Respondent, Ms Ackerley of counsel, with Ms K. Orr.

22. Observing on both days (26 November 2021 and 26 January 2022) but taking no part in the proceedings was an employee of the tribunal service, Ms E. Dudley.

23. On 26 November 2021 the Tribunal dealt with the issue of the four withdrawals of cash from the service charge account, as a preliminary point. Those being:
    - In service charge year 2015 £9,883.33
    - In service charge year 2016 £8,221
    - In service charge year 2017 £6,490.07
    - In service charge year 2018 £13,418.16

24. The case on behalf of the Applicant is that this cash was withdrawn from the service charge account to be paid to the landlord without any explanation as to why that was happening. The money in the service charge account is held on trust for the tenants who pay the service charge and that conduct of this nature is a breach of trust. The Tribunal should determine that the money was improperly withdrawn and that the Applicant's proportion of each amount should be paid back into his service charge account.

25. The Applicant accepts that some of the money may be rent as opposed to service charges but there is no proof of that in the evidence. Further, the Applicant points to the fact that the sums that have been withdrawn in cash are not dividable by the £250 that all tenants are required to pay each year in rent, making it unlikely that all of the money is rent.

26. Counsel on behalf of the Respondent submits that she has very carefully checked the accounts and the evidence in the case and that the money is most certainly not service charge money. The service charge money is all accounted for in the service charge accounts.

27. There has been no mention by either Party to the case of any other withdrawal from the service charge account that could be rent during the four year period now being considered.

28. Secondly, if there is any breach of trust involved in this, which is denied, Ms Ackerley submits that this is beyond the jurisdiction of the Tribunal, since it is not necessary for the Tribunal to investigate any such breach as the service charge funds are all properly accounted for and are in the service charge account. As such only the County Court would have jurisdiction to consider a breach of trust.

29. Third, the cash book kept by the management agent refers to these amounts of cash as "payments to owner", that supports the contention that they are rent payments, what else could be properly paid to the landlord? Miss Ackerley submits that the Tribunal does not have jurisdiction over rent payments, that being a matter for the County Court.

30. The Tribunal retired to consider the issue, but then reconvened without making a final decision to make further enquiries of the parties.

31. Mr Horn was given the opportunity to make further submissions and submitted that he accepted that some of the money could well be rent. However, the withdrawals sent the account into debt and resulted in service charges being increased because of the resultant bank charges. As such, he submitted that the Tribunal does have jurisdiction to consider the amounts as aforesaid since the withdrawals had resulted in bank charges that increased the service charges. Mr Horn submitted that the Respondent should be in a position to establish what the cash withdrawals were for.

32. The Tribunal retired to consider this issue further. The Tribunal decided that these cash withdrawals are, on the balance of probability, withdrawals of money that relate to rent and paid to the landlord as required under the leases. As such the Tribunal does not have jurisdiction to consider them further and makes an Order this effect, attached at annex 3. In coming to

this decision the Tribunal took account of all the above submissions and also the following facts.

33. The Tribunal does not agree with the Applicant that the fact that cash was withdrawn in service charge year 2015 resulted in the account going overdrawn. With service charge and rent payments being collected and service charge expenses for 64 flats being expended money was going in and out of the account all the time. Expenditure generally exceeded income, that is what caused the account to go overdrawn.

34. The management agent was collecting rent on behalf of the Respondent and if all 64 long leaseholder tenants had paid that which they were required to pay by the terms of their individual leases the management agent would have collected £16,000 per year. That would then have to be paid over to the landlord. Other than these annual cash payments to the landlord as detailed above, there are no payments of funds that could amount to rent being paid from the management agent to the landlord. This strongly indicates that the cash payments are rent and that not all of the 64 tenants were paying the required amount as the figure is never the full £16,000. As such there would be an issue to be considered as to interest payments relating to failure of some of the long leaseholder tenants to pay the rent that was due.

35. The service charge accounts do not deal with these cash withdrawals, but the cash book does and the entries state that cash went to the landlord, supporting the submission that the cash was rent.

36. It is unusual for cash in these sums to be withdrawn from a service charge account, but there is no evidence to suggest that the money was service charge money. The amounts are not dividable by £250 payments of rent, but payments may have been made of less than £250, reflecting part payments or interest charged in relation to prior failures to pay rent.

37. There are annual accounts, budgets, balancing calculations, transaction reports and a break down of how service charge funds have been spent. The Tribunal is satisfied on the balance of probability that these four amounts of money are not service charge monies. They are rent and as such this Tribunal does not have jurisdiction to consider them any further.

38. The Tribunal delivered an oral judgement on this matter, reserving the right to give more detail in this Decision.

39. The Tribunal went on to consider Scott Schedule points (that were not numbered) relating to accountancy fees for 2015 and 2016 and disputed bank charges for 2016.

40. It was clear that the Tribunal would again have to adjourn part-heard and the parties indicated that they would like time in which they might be able to agree some of the matters in issue. The Tribunal adjourned to reconvene on 26 January 2022.

41. On 26 January 2022 the parties informed the Tribunal that a settlement agreement had been reached with regard to most of the case. The Tribunal considered the agreement and approved it (annex 2 (1)). In summary the Applicant agreed to withdraw his challenge to eight disputed service charge expenses. The Respondent agreed to credit the Applicant's service charge account in relation five disputed service charges, leaving three areas to be determined by the Tribunal. The Parties asked for more time to negotiate and it was granted. Further negotiations resulted in agreement on another disputed service charge. Further, because there is now a right to manage company in place the Parties agreed that the terminology used in the agreement should be altered. A copy of the second form of the agreement was emailed to the Tribunal office but could not be viewed by the Tribunal until after the Parties had left the hearing. The effect of the agreement was explained and the Tribunal approves of the agreement (annex 2 (2)).

42. The sums left to be determined by the Tribunal, after the second form of the agreement had been reached are accountancy fees of £4,200 over the four year period covered by the Scott Schedule and 'known defects', comprised of installation of a toilet in the caretaker's area £3,060; lightning conductors £3,956.40 and electrical survey reports of £1,620 and £1,755.

43. The Applicant submits that the lease requires that the service charge accounts be audited accounts. However, the fees in dispute relate to the accountant preparing certified accounts and not audited accounts. As such it was unreasonable of the landlord to instruct the accountant to prepare this form of account. Therefore, the full amount of £4,200 as invoiced over these four service charge years should not be classed as a service charge cost and the Applicant should have a refund of his proportion of these costs.

44. Further, the Applicant points out that there were two certified accounts for service charge year 2017, showing that the accountant's certificates in 2017 could not be relied upon and that as such accounts should have been audited accounts.

45. Further, that certified accounts are not fit for purpose, they do not fully explain the financial situation of the service charge account unless they contain a balance sheet and account balances. The Applicant made reference to the certified account for service charge year 2019, which he does accept as a set of accounts that are fit for purpose and properly

chargeable as a service charge cost because they do contain all the information that he would like to see in a service charge account.

46. Ms Ackerley, on behalf of the Respondent submits that the Respondent has complied with the terms of the lease by instructing the accountant to prepare certified service charge accounts and that if the landlord had asked for audited accounts these would have been more expensive and tenants might then have challenged this extra cost before a Tribunal.

47. Ms Ackerley further submits that the first set of accounts that were issued for service charge year 2017 (bundle, page 160) were incorrect and issued by mistake. They were agreed to by a member of staff who should not have signed them off, as referred to in an email (page 425 (f), bundle, second lever arch file).

48. Ms Ackerley referred the Tribunal to the certificates signed by the accountant, listing the information provided by the management agent to the accountant when the accountant drew up the accounts. The accounts for 2015 commence at page 41 of the bundle and are entitled 'Service Charge Income and Expenditure Account'. The accountant's certificate is at page 42 and the accountant states that he has seen account records, vouchers, documentation and has received explanations, further he has examined every service charge expenditure voucher presented to ensure that that amount corresponded to the records, was in the correct year and for the correct property.

49. Further, Ms Ackerley referred the Tribunal to emails (bundle, second lever arch file, page 274) to and from the accounts department establishing that the accountant would be provided with transaction reports, cashbook workings, bank statements and invoices.

50. Ms Ackerley submits that the accountant prepared accounts in accordance with the terms of the lease, that he submitted invoices for payment and was paid. The costs are service charge costs and are reasonable.

51. The Tribunal then moved on to consider the invoices grouped together under the heading 'known defects' in the settlement agreement (page 256, part of the now divided year by year, Scott Schedule).

52. The Applicant refers to a period during which there was refurbishment of the block of flats. He has copied an extract from the purchase agreement relating to this into the Scott Schedule clause 2.3 'The Seller acknowledges and undertakes with the Buyer to use all reasonable endeavours to refurbish the Building together with all necessary works thereto and the Property in a good and workmanlike manner with materials of a suitable quality in accordance with the provisions set out in Schedule 1 of this

agreement'. The remainder of the document is not copied so the Tribunal cannot see any other part of it.

53. It appears to be common ground that this refurbishment resulted in no service charges being charged for works done during the period covered by the agreement, so that works done on 31 August 2015 and for the two years prior to that would be refurbishment costs and not service charge costs.

54. The Applicant submits that work on installing a toilet in the caretaker's area was done as part of the refurbishment, relying upon the evidence by the letting agent Mr Darren Sharkey to the effect that Mr Sharkey was of the opinion that the toilet had been in place before 31 August 2015. The invoice for this work (bundle, page 86) has an incorrect date upon it. The whole amount of £3,060 is not a service charge cost and his appropriate share should be refunded to his service charge account.

55. The Respondent submits that there had been a caretaker's toilet in this area at some stage before 2015, but that the photograph that was said to be a photograph of the prior toilet during the hearing on 17 July 2019 was produced by mistake as that photograph did not show the correct position of the prior toilet. The Respondent has been made aware that there was asbestos in the prior toilet (there is reference to an asbestos report) and as such the toilet had to be removed during the refurbishment this information is contained within an email (bundle, second lever arch file, page 389).

56. That left the landlord with a caretaker's area that needed a toilet but did not have one. The landlord therefore caused a toilet to be fitted and that is what the Tribunal saw during the inspection on 17 July 2019. The invoice for the toilet is dated 24 June 2016. It is a service charge cost that is reasonable as it was to pay an invoice for the work done.

57. Ms Ackerley referred to the accounts for service charge year 2016 and they clearly show that the cost of installing the toilet was included in the service charges for that year (bundle, page 43).

58. The Parties then moved on to deal with the issue of the lightning conductors at a cost of £3,955.40, invoice dated 28 April 2016 (evidential bundle, second lever arch file, page 268 and 269). This relates to the installation of four lightning conductor rods from the roof of the block of flats to the ground and appear to be additional to those already in place. This was paid on 7 June 2016.

59. The Applicant submits that this work should have been carried out as part of the refurbishment, prior to 31 August 2015 and should not therefore be a service charge cost. He refers to an email from the solicitors acting for the Respondents suggesting that the lightning rods prior to this work being carried out had been found to be non-compliant with the then current legislation (bundle, page 275). He submits that this was a matter that should have been dealt with in refurbishment. Since it was not then the landlord should have excluded this work from the calculation of service charges.

60. Ms Ackerley made the point that although the Respondent accepts that in 2016 the lightning rods were not compliant with the legislative requirements in 2016, they must have been fitted in compliance with the requirements that were current when the block of flats was built. Further, there is no evidence before the Tribunal to indicate when the requirements changed and how often they may have changed.

61. The Respondent submits that from the evidence in the case it is not possible to ascertain whether or not the work should have been carried out in the refurbishment. The fact of the matter is that the landlord was in the position of having to install new lightening conductors in 2016. This is a chargeable service charge expense. Contractors were instructed to carry out the work and the landlord had to pay their invoice. As such this is chargeable as a service charge cost and is reasonable.

62. The final issue is two invoices from the Parker Wilson Consultancy for the provision of two reports as instructed by the landlord on the condition of remedial works. The first is dated 30 September 2016 at a cost of £1,620 for the provision of a report dealing with the electrical condition, both mechanical and electrical, of certain works that had been undertaken (bundle, pages 270 and 271).

63. The Second is an invoice from the same company for £1,755. Dated 10 October 2016 for supplying an electrical survey on remedial works (bundle, pages 272 and 273).

64. It appears to be common ground between the Parties that Mill View Living had agreed to carry out some remedial work at their own expense in relation to work that it appears they had accepted should have been carried out in the refurbishment. That work was to cost somewhere in the region of £30,000 to £36,000 that was not a service charge expense (bundle, page 276).

65. The Applicant contends that as a result the two invoices for reports on the condition of the work subject to this agreement should also have been free of service charge costs.

66. The Respondent submits that this is not the correct approach to take. The inspections were carried out when Mill View Living had indicated that parts of the work had been completed. The landlord wished to ensure that the work had been carried out properly. This was done to protect the tenants from any possible problems that might arise later if the work had not been carried out properly. The reports were therefore not covered by the agreement to carry out work free of service charge cost. They were an additional protection against things going wrong in the future because of mistakes made by the company paid to do work in the present. It was reasonable for the landlord to act in this way and the service charges are reasonable.

67. Mr Horn then made submissions to support his application for an order to be made to protect him from being charged a service charge that incorporates the costs of these proceedings in it as a service charge cost. He submitted that he had been forced to bring this case before the Tribunal because the landlord would not negotiate a settlement. If he had not brought the case, he would still be required to pay all the demanded service charges, even when the Parties have recently agreed that they should not all have been demanded.

68. Ms Ackerley stated that if costs of the case were to be pursued against the Applicant, the costs would only be from the moment that her instructing solicitors, J, B. Leitch had been instructed, being 14 April 2021. Ms Ackerley pointed out that there are 63 other tenants and that they cannot be protected against service charges being demanded that includes the costs of these proceedings. Ms Ackerley suggested that the Tribunal might consider making a section 20C order, but not for the whole of the costs of the case.

69. Mr Horn responded with an application for costs against the Respondent, without being any more specific than he had been put to considerable expense.

70. Ms Ackerley pointed out that such costs could only be claimed pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. That the hurdle for granting such costs was a high one and she submitted that such an application was not appropriate in this case.

71. The Tribunal then went into private session to resolve the remaining issues.

Determination

72. The Tribunal first considers the issues in relation to annual service charge accounts. the Tribunal has already determined that the terms of the lease do require certified accounts, but do not require audited accounts, see the relevant provisions of the lease above.

73. The Tribunal accepts that the accountant, when preparing these accounts had before him the various documents referred to above in paragraph 48 and 49. The Tribunal determines that these were sufficient to satisfy the rather vague requirement in the lease described in paragraph 14, above.

74. The Tribunal is mindful of the fact that there were two different certified accounts for service charge year 2017 (bundle, pages 160 and 165). However this came about, this in no way strengthens the case in favour of requiring audited accounts but will be taken into account in determining the issue under section 20C of the Landlord and Tenant Act 1985.

75. These certified accounts for service charge year 2015, 2016, 2017 and 2018 were correctly required under the terms of the lease, they were provided and the invoices that relate to their provision are service charge costs. Those costs are reasonable. The service charge costs of £4,200 are allowed in full.

76. The Tribunal next considered the four invoices grouped together in the heading of 'known defects'.

77. The Tribunal notes that it is unfortunate that during the inspection on 17 July 2019, the representative of the then management agent put forward a photograph of a toilet in a position that the representative had to accept could not be correct in the hearing of the same date. The Tribunal accepts that prior to the refurbishment there was a toilet in the caretaker's area. We suspect that this is the toilet that the witness Mr Sharkey was referring to. Further, we accept that the refurbishment resulted in the removal of the toilet because there was a problem with asbestos. Further, we accept that after the refurbishment period had ended a new toilet was constructed upon the instructions of the landlord and that this was a service charge cost. The landlord paid the invoice for the work. The cost is reasonable and allowed in full.

78. The Tribunal can see that in the issue relating to electrical inspection reports the landlord was both keen to ensure that matters that should be dealt with outside service charges were dealt with as such, whilst seeking to protect tenants from any possible expense in the future as a result of faults in the work that was being undertaken. The Tribunal approves of the actions of the landlord in ensuring that £30,000 to £36,000 in remedial work was not charged to the tenants. The Tribunal determines that it was

reasonable for the landlord to engage Parker Wilson Consultants to verify that the contractors had completed this work properly, to the specifications required, when the work was completed. As such the Tribunal determines that the costs are chargeable as service charge costs and that they are reasonable and allowed in full.

79. The Tribunal then considers the lightning conductors. The landlord was presented with the fact in 2016 that work needed to be done. The landlord instructed contractors to carry out the work. On this the landlord had no choice, he could not ignore the fact that the work had to carried out. The Tribunal determines that the work is work that can be charged as a service charge cost. The landlord paid the invoice for the work that had been done. It is not possible now, on the evidence before the Tribunal, to decide whether or not the work should have been done in the refurbishment. The cost is reasonable and is allowed in full.

80. To summarise the findings of the Tribunal so far:

- Accountancy fees of £4,200 are reasonable service charge costs
- Toilet construction fees of £3,060 are reasonable service charge costs
- Lightning conductor work of £3,956.40 is a reasonable service charge cost
- Electrical inspection reports of £1,620 and £1,755 are reasonable service charge costs

81. The Tribunal now considers the Applicant's application for an order pursuant to section 20C of the Landlord and Tenant Act 1985 to prevent the landlord from including the costs relevant to these Tribunal proceedings from being included as a relevant cost when calculating the Applicant's service charges. There is also an application for an order pursuant to a similar provision relating to variable administration charges for the same costs pursuant to the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11 (application to the tribunal, page 6, in the bundle of evidence at page 367).

82. The Tribunal notes that if protection under section 20C is granted then all other long leaseholders in the block of flats can still be charged a service charge to recompense the landlord for these costs. However, the Tribunal hopes that other tenants will also benefit from the fact that if this Decision is also applied to their service charge accounts, they will also receive a payment from the landlord.

83. Futher, the Tribunal notes that the Tribunal has struck out part of the Applicant's claim as a matter that the Tribunal does not have jurisdiction to consider, namely referring to rent. However, the Tribunal also notes that the management agent's notes and record keeping relating to this part of its functions leave much to be desired.

84. Further, the Tribunal notes that the Applicant has succeeded in reducing his service charges as a result of the settlement agreement, which the Tribunal determines would not have happened had he not brought this case before the Tribunal.

85. Further, the Tribunal also notes the fact that 2 different certified accounts were issued on behalf of the Landlord in service charge year 2017, which should never happen and at the very least must have contributed to this case coming before the Tribunal.

86. The Tribunal notes that the case management hearing on 30 June 2021 was necessary because the landlord had originally chosen to be represented by its management agent Regent Property Management Limited who had resiled from the case and left the landlord with no evidential bundle, so that upon J. B. Leitch Solicitors being instructed to represent the landlord, the landlord had to request an additional bundle of evidence from the Tribunal. This Tribunal decided at that stage that it was necessary to hold a case management hearing to ensure that the newly instructed solicitors had everything that the solicitor required to make progress with the case that was already part-heard. The Applicant should bear no financial responsibility for that hearing being called.

87. The Tribunal takes these same factors into account in considering whether to make an order pursuant to the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11. That provision prevents the landlord from charging the costs incurred during a case before this Tribunal as a variable administration charge against the Applicant alone.

88. The Tribunal, having considered all these factors determines that it is just, fair and equitable to make the orders requested by the Applicant, pursuant to 20C of the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002, paragraph 5A of schedule 11.

89. The evidence in the case has not touched upon the issue of what share of the service charge costs has been attributed to the Applicant. The lease paragraph 1 of the seventh schedule states that the proper proportion of maintenance expenses will be prescribed by the landlord (bundle, page 349). Of course any such prescription would have to be reasonable and there are 64 flats in this block of flats. (It may be that a reasonable prescription would be that the long leaseholder tenants pay a one sixty-fourth share per flat.)

90. The Applicant made an application for costs against the Respondent. Such an application can only be made pursuant to rule 13 of the of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, requiring that the other party has acted unreasonably in defending its case. In practice this requires very unreasonable conduct to be proven by the party making the application and in this case the landlord has successfully defended its case to a larger extent than it has failed to do so. Ms Ackerley has stated that the landlord will limit its costs to those expended since J. B. Lietch Solicitors were instructed and that appears to this Tribunal to be a fair and just position to take. The actions of the landlord have not been so unreasonable as to warrant an order for costs.

Decision

91. The Tribunal makes an Order to strike out part of the Applicant's case as it refers to four amounts of cash withdrawn from the service charge account, being matters that are outside the jurisdiction of this Tribunal because they are rent and not service charges. Those being:
    - In service charge year 2015 £9,883.33
    - In service charge year 2016 £8,221
    - In service charge year 2017 £6,490.07
    - In service charge year 2018 £13,418.16 (annex 3)

92. The Tribunal approves the settlement agreement made between the Parties and assumes that the Parties will put this into effect without more from the Tribunal (annex 2(1) and annex 2(2)).

93. The issues that have been left to the Tribunal to decide have all been decided in favour of the Respondent and the Respondent must calculate the appropriate share that has to be paid by the Applicant and the Applicant must pay the sums to the Respondent forthwith, if they have not already been paid.

94. The Tribunal decides that it is fair and just to make an order that all of the costs incurred, by the landlord (Respondent) in connection with proceedings before this First-tier Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant tenant, pursuant to section 20C of the Landlord and Tenant Act 1985.

95. The Tribunal makes an order to extinguish the tenant's liability to pay an administration charge in respect of litigation costs with regard to these Tribunal proceedings, it being just and equitable to do so, pursuant to Paragraph 5A of schedule 11, of the Commonhold and Leasehold Reform Act 2002.

96. This case has been conducted partly during the Covid-19 and Omicron pandemics. The only change that this had made to the Tribunal's procedures in this case is that the hearings of 26 November 2021 and 26 January 2022 have been held on the Tribunals video platform and not in a Tribunal room. No injustice has resulted towards either Party as a result.

97. Appeal against this Decision and the Decision made on 17 July 2019 is to the Upper Tribunal. A party wishing to appeal must first, within 28 days of this decision being sent to the party, deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds of the appeal, the paragraphs of this Decision that are challenged, particulars of the appeal and the result that the party seeks to achieve by making the appeal.

Judge C. P. Tonge

Date sent to the parties 14 February 2022.

Annex 1, the Decision and Directions of 17 July 2019.

Annex 2(1), the Settlement Agreement presented to the Tribunal before the start of the adjourned hearing on 26 January 2022.

Annex 2(2), the Settlement Agreement presented to this Tribunal during the hearing of 26 January 2022.

Annex 3, the Order made on 26 November 2021 to strike out part of the Applicant's case.

Annex 1

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/LSC/2019/0003**
Property	**:**	**Flat 54, Mill View Tower, Mill View, Liverpool, L8 6AG**
Applicant	**:**	**Mr Marc Horn**
Respondent	**:**	**Tuscola FC101 Limited**
Represented by		**Regent Property Management Limited**
Type of Application	**:**	**Section 27A and 20C, Landlord and Tenant Act 1985. Schedule11, paragraph 5a, Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	**:**	**Judge C. P. Tonge LLB, BA** **Mr I. James MRICS**
Date of Directions	**:**	**17 July 2019**

DECISION AND DIRECTIONS OF 17 JULY 2019

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Application and background

1. This case comes before the Tribunal by way of an application dated 10 January 2019 from the Applicant, Mr Marc Horn, the long leaseholder of flat 54, Mill View Tower, Mill View, Liverpool, L8 6AG, "the property". Mr Horn is assisted by Mr Darren Sharkey of Elite Property who acts as a rental agent on behalf of 50 of the long leaseholders at the block of the flats accommodating the property, including Mr Horn.

2. The Respondent, Tuscola FC101 Limited, is the holder of the remainder of the head lease on the property which commenced on 30 March 2012 for a term of 125 years. The Respondent is represented by Mr Alexander Rowell a Director of Regent Property Management Limited and managing agent of the block of flats that accommodates "the property", "Mill View".

3. The application calls into question whether or not service charges are payable under the terms of the lease and if payable, are they charged at a reasonable level, for service charge periods 1 September 2015 to 31 December 2015, 1 January 2016 to 31 December 2016, 1 January 2017 to 31 December 2017 and the budgeted service charges for service charge year 2019.

4. Directions were issued on 31 January 2019, unfortunately they did not fully deal with the necessary first step of financial disclosure.

5. By an email of 26 February 2019 the Applicant notified the Respondent that (in effect) financial disclosure had not been made. This was copied to the tribunal office.

6. By an email of 5 March 2019, Mr Rowell made an application requesting that the application be struck out because the Applicant was in breach of these Directions. This application being particularised in the Respondent's statement of case, dated 17 April 2019, listing numerous alleged breaches.

7. This case was listed for final hearing to take place on 17 July 2019.

8. On 2 July 2019 this case was allocated to Judge Tonge who, upon reading the case, realised that financial disclosure had not properly been dealt with and issued Additional Directions, served on the parties by email on 3 July 2019. These Additional Directions required financial disclosure to take place by 4pm on 11 July 2019.

9. On Saturday 6 July 2019 Mr Rowell, on behalf of the Respondent, sent an email in response to the tribunal office and the Applicant requesting an extension of time to serve financial disclosure to 23 July 2019. Mr Horn also sent an email on the same date. On 15 July 2019 Judge Tonge was made aware that emails had been received, but was not able to consider

their content until the next day. Judge Tonge decided that the inspection and hearing scheduled for 17 July 2019 must proceed in the expectation of either completing the case or assisting the parties in advancing the case towards completion.

The inspection

10. The Tribunal inspected the block of flats, "Mill View", between 10 am and 10.50 am on Wednesday 17 July 2019. The Applicant was present along with Mr Sharkey of Elite Property, accompanied by an observer Patricia Reynolds. Mr Rowell was present on behalf of the Respondent. Also present as an observer was Judge White.

11. "Mill View" is a purpose built block of flats with a ground floor and 15 further floors, four flats to a floor, making a total of 64 flats. There are two central lifts, one serving odd numbered floors and one serving even floors. There is a flight of steps to all floors. Each floor above ground has two balconies, those on the first floor being provided with windows, higher levels having railings. The common landings, halls and stairs all have floor tiles, patched with replacement tiles in places and in some places marked and in need of cleaning. Common internal walls are painted and areas of missing paint made it obvious that some wall signs had been removed by persons unknown. All floors above ground level have four electric lights, the ground floor having more due to provision of lighting in the caretaker's areas. These provide common interior lighting. The building has firefighting dry risers. Some door handles have been carelessly screwed in place over existing signs, instead of removing and or replacing the signs.

12. The four ground floor flats have private entrance doors . All other flats, including the property are accessed by one of two common entrance doors. The car park side of the building has a key operated locking door. The opposite side if Mill View has a main entrance, still key operated, but there is also an electric door entry system, press button or linked to mobile telephone operation. Post Boxes are provided against a wall in the ground floor hall for delivery of mail. There are cupboards on the first floor housing electrical apparatus.

13. Outside at "Mill View" there is an access driveway with two car parks off it providing parking for 21 vehicles. These car park areas are marked as being private. All tenants are given permits, but the spaces are available on a first come, first served basis. There are two lamp posts and security style lighting on all four corners of the building providing common exterior lighting. "Mill View" was designed with domestic rubbish shoots from all floors falling into a wheelie bin in a specially designed ground floor room. These shoots have now been permanently closed off. Tenants are now required to use 8 wheelie bins that are stored between the building and the larger car park. There are grassed areas and two trees.

14. The caretakers' rooms include an area where 37 closed circuit television cameras can be viewed. These cameras provide recordings that are retained for 28 days. There is a common electricity distribution system. There is a large cold water holding tank that has a pressure vessel and three cold water pumps to ensure supply of cold water to all floors in the building.

15. There are two areas of particular importance to the case contained within the caretakers' rooms. The Respondent has levied a service charge for construction of a toilet in this area due to being told by developers that a pre-existing toilet had been removed. There is a photograph of the pre-existing toilet shown to be next to a white uPVC door. The Tribunal inspected the area where this was said to have once been situated. The Tribunal could see no evidence of that having been the case. Walls and water tanks did not appear to have been altered or moved. There is no white uPVC door (as shown in the photograph). The doors are green and wooden. It did not appear that there was room for a toilet to have been situated where we were told to look. The Tribunal noted the position of what was said to be the newly installed toilet in a room with stud walls. There is a dispute as to when this was built. There is a kitchen sink unit outside the toilet.

16. The Tribunal does not at this stage deal with the law relevant to service charge disputes or the details of the terms of the lease governing service charges due to fact that these are not of sufficient present importance bearing in mind that the case has been adjourned with further Directions.

The hearing

17. The hearing commenced at 11.30 am at the Civil and family Court in Liverpool. The persons present at the inspection were present for the hearing.

18. First, the Tribunal dealt with the Respondents application for the whole application to be struck out for numerous breaches of the Directions of 31 January 2019. The Tribunal explained to the parties that the original Directions had missed out the step that should have required financial disclosure from the Respondent, this would have made it possible for the Applicant to consider the financial information and decide what he could agree and what, if anything he wanted to dispute. This must have made it difficult for the Applicant to comply with the Directions. The Respondent himself had difficulties, stating " The Respondent had difficulty in responding, as the Direction were unclear" (page 13 of the Respondent's bundle, fourth paragraph).

19. The Respondent's representative accepted the Tribunal's apology for contributing to this difficulty and limited his application for an order to strike out the Applicant's case to the fact that the Applicant had been 5 days late in serving his statement of case and that it had been served by email rather than by letter. The Tribunal heard representations from both parties and asked the parties to leave the tribunal room whilst it determined this issue.

20. The Tribunal can find no prejudice to the Respondent in the two admitted breaches, other than the fact that there has been a slight delay. The Tribunal reminds itself that its overriding objective is to be fair and just, rule 3 of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 (S. I. 2013/1169) "the Rules". The Tribunal considered the terms of rule 9 of "the Rules", dealing with striking out, in appropriate circumstances. These breaches are not sufficient for the Tribunal to strike out the Applicant's case. The Tribunal announced this decision.

21. Due to the fact that Directions issued on 2 July 2019 had not been complied with by the Respondent and that the Applicant is seeking an adjournment for the service of a bank certified copy of the service charge bank account, it was apparent that the Tribunal would not be able to conclude the final hearing today. The Tribunal therefore determined that it would adjourn the case but not until it had heard evidence about all contentious matters with a view to avoiding the parties having to attend a further hearing.

22. By agreement between the parties the Tribunal invited the Applicant to amend his application to include service charge year 1 January 2018 to 31 December 2018. The Tribunal amends the application accordingly.

23. The second contentious issue is whether or not a direction should be made requiring the respondent to serve a copy of the service charge bank account on the Applicant, details of which are given at page 14 of the Respondent's bundle, paragraph 15.

24. The Applicant submits that this is essential since by checking the bank statement against a payment allocation, supported by invoices for those payments, he can check the accuracy of the certified accounts relied on by the Respondent. This is necessary because the certified accounts are not reliable, the Respondent having issued two such certified accounts for the same service charge year, 2017, on different dates, with different figures (page 29, Applicant's bundle as compared to page 411 Respondent's bundle). Further, the Applicant's attempt to analyse accounts at present appear to show items that are in doubt as to whether they apply to Mill View at all (page 21 and page 22, Applicant's bundle).

25. Further, the Applicant submitted that he is entitled to have a certified copy of this bank account served upon him by virtue of section 42A of the Landlord and Tenant Act 1987 (as inserted by section 156 of Commonhold and Leasehold Reform Act 2002).

26. On behalf of the Respondent submissions were made to the effect the difference in the two certified accounts for service charge year 2017 was an honest mistake. That the accounts are accurate and should be relied upon. Further, it is not possible to serve a copy of the bank account in question because it contains bank account details of persons paying into the account and it contains names of the persons paying in, to produce either will be a breach of data protection and G. D. P. R. rules (without stating specifically which rule he suggests would be broken).

27. This issue was determined by the Tribunal in the absence of the parties.

28. Whatever the reason was for that fact that two different certified accounts were issued for service charge year 2017, the fact is that they were issued. In these circumstances it does not surprise the Tribunal that the Applicant should doubt the certified accounts being relied on by the Respondent.

29. The Tribunal agrees with the Applicant that section 42A of the Landlord and Tenant Act 1987 does give him the right to inspect the bank account and take copies of it. The Tribunal therefore determines that since the Respondent objects to the Applicant having an unredacted copy of the account, the only way to ensure that the rights of the Applicant are protected is to order disclosure of a copy of the bank account statements.

30. The Tribunal can see no good reason why the Applicant should be allowed to see bank sort codes or bank account numbers of persons paying into the account and agrees with the Respondent that these may be redacted.

31. The Tribunal does not agree with the Respondent that the names of persons paying into the bank account should be redacted. The names of the other long leaseholders will be registered at the Land registry in public registration documents. Further, Mr Sharkey represents the interests of 50 of the long leaseholders and will already know who they are.

32. The Tribunal announced this decision it being necessary to do so for the information of the parties in the furtherance of the case today.

33. Oral evidence was given about the contentious issues raised relating to toilets being removed and replaced in the caretaker's rooms. This issue revolves around the fact that due to redevelopment at "Mill View" by Mill View Living Limited there was a rental guarantee period and service charges can only be charged for services provided from 1 September 2019. There is a service charge cost of £3,060 for provision of a toilet and room

in the caretakers' rooms. The issue being whether or not this cost was incurred before or after 1 September 2015.

34. Mr Rowell on behalf of the Respondent conceded that the photograph shown on page 181 of the Respondent's bundle was not taken in the caretakers rooms, but continues to submit that there was a need to build a toilet in the caretakers' rooms. That is the toilet that the Tribunal did see this morning and for which the Respondent paid £3,060 as a service charge cost in service charge year 2016 (page 183 and 370 of the Respondent's bundle).

35. Mr Sharkey stated that this is not correct, he remembers that the toilet that the Tribunal saw was in the position in 2013. Mr Starkey appeared to be less confident about whether the stud walls that for the room around the toilet were in the same position in 2013.

36. The Applicant voiced the opinion that the date of the payment could be resolved by looking at the bank statement that the Tribunal are to order be served upon him. The Tribunal agreed to leave this issue for the Applicant to consider.

37. The parties agreed that all contentious matters have been dealt with in so far as they can be today.

Decision

38. The Respondents application for the Tribunal to strike out the Applicant's case is refused.

39. The Respondent will be required to serve upon the Applicant a copy of the bank statements for the service charge account as is detailed in these Directions.

40. This is not a final determination of the case and therefore there are no statutory rights of appeal against this Decision, those rights will attach to the final determination.

Judge C. P. Tonge

Directions

1. The Respondent is to produce an invoice for each item of service charge expenditure as detailed on the service charge budgets and accounts for the service charge years relevant to this case, including now service charge year 2018. These to be delivered to the Applicant by 4 pm on 28 August 2019.

2. Where an invoice is not in the possession of the Respondent in respect of such of service charge expenditure (as referred to in Direction 1), the Respondent has permission to provide a short explanation as to why the service charge expenditure is a service charge cost under the terms of the lease and why the Tribunal can conclude that it is charged at a reasonable level. These explanations to be delivered to the Applicant by 4pm on 28 August 2019.

3. The Respondent has until 4pm on 28 August 2019 to serve upon the Applicant bank statements for the service charge account as detailed at page 14 of the Respondent's bundle, paragraph 15. These are to be original statements on bank headed paper, not digital statements. The Respondent may redact the sort code and bank account number of any person paying into the account, but may not redact the names of such people. These will cover the period of service charge years 2015, 2016, 2017 and 2018.

4. The Respondent has until 4pm on 28 August 2019 to serve upon the Applicant a payment allocation, supported by invoices for those payments, making it clear exactly what was paid for out of the service charge account.

5. The Respondent has until 4pm on 28 August 2019 to serve upon the Applicant accountant's certificates as required under the terms of the seventh schedule of the lease, clause 1.1, 2 and 3 for service charge years 2015, 2016, 2017 and 2018.

6. It is hoped by all involved that the determination of the issues in this case can now be done by the Tribunal considering the papers in the case without a further hearing at which the parties will have to attend. However, either party has until 11 September 2019 to notify the Tribunal that a further oral hearing is required.

7. The Applicant has until 4pm 11 September 2019 to reply to the Respondent in writing to notify the Respondent of any issues that will have to be put before the Tribunal for determination, giving detail of the issues.

8. In the event that there are such issues to be determined by the Tribunal the Applicant shall commence a table stating what those issues are. The first column will state the batch number and the Respondent's internal audit number relevant to the issue and a descriptive title of the issue, the second column will briefly state the nature of the issue and amount being claimed by the Respondent, the third column will contain the figure (if anything) that the Applicant is willing to pay, the fourth column will be left blank for the response of the Respondent. This must be delivered to the Respondent by 4pm on 18 September 2019.

9. The Respondent shall complete the fourth column of the table referred to in paragraph 5 above and deliver a copy back to the Applicant by 4pm on 2 October 2019.

10. The parties must seek to agree a joint bundle of all documents served from 18 July 2019 onwards. This bundle is to be indexed and paginated (and will include the table in Direction 6 and 7). A copy of this bundle to be served upon the Respondent by the Applicant and three bundles served upon the Tribunal by the Applicant, by 4pm on 16 October 2019.

11. Delivery of documents to be by post or hand delivery, but this may now be supplemented by email.

12. Should either party wish to amend these Directions then an application should be made to the Tribunal in writing.

FAILURE TO COMPLY WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN DETRIMENT TO THE PARTIES CASE. FOR EXAMPLE, IT MAY LEAD TO THE TRIBUNAL REFUSING TO HEAR LATE EVIDENCE; TO A PARTIES CASE BEING STRUCK OUT; AND/OR TO AN ORDER FOR COSTS BEING MADE.

Annex 2 (1)

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
CASE REFERENCES: MAN/00BY/LSC/2019/0003

IN THE MATTER OF A DETERMINATION PURSUANT TO SECTION 27A LANDLORD AND TENANT ACT 1985

B E T W E EN : -

MR MARC HORN

Applicant

And

ROCKWELL (FC101) LIMITED (INCORPORATED IN BRITISH VIRGIN ISLANDS)

Respondent

PREMISES: FLAT 54, MILL VIEW TOWER, MILL VIEW, LIVERPOOL, L8 6AG

SETTLEMENT AGREEMENT

THE PARTIES AGREE THAT:

1. The Applicant agrees to withdraw his dispute in respect of the following charges:

   i. 2015 £2,262.60 landlord loan and £475.00 NIC
   ii. 2017 SLC invoice dated 10 November 2017 totalling £1,860.40
   iii. 2017 SLC invoice dated 13 December 2017 totalling£1,201.04
   iv. 2017 refunds of £61.14
   v. 2017 Direct telecom charges of £77.22 & £76.85
   vi. 2017 Direct Telecom overpayment of £176.28
   vii. 2017 Caretaker charges of £42,875.83 save for £2,107.79as detailed at paragraph 3 below
   viii. 2018 Parklands Caretaker invoice £360.00

2. The Respondent agrees to credit the service charge account for the Premises in respect of the following disputed bank charges:

   i. 2016 - £245.28
   ii. 2017 - £516.72
   iii. 2018 - £337.78 and £218.67

   Total - £1,318.45

3. The Respondent agrees to credit the service charge account for the Premises in respect of the caretaker charges still in dispute in the sum of £2,107.79.

4. The Respondent agrees to credit the service charge account for the Premises in respect of the 2018 SLC invoice dated 22 February 2018 totalling £2,938.75.

5. The sums left to be determined by the Tribunal are as follows:

    i. Accountant Fees - £4,200.00
    ii. Management Fee Invoice - £629.35
    iii. Known Defects - £10,331.00

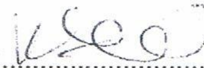
6. The Tribunal made a declaration during the hearing on 26 November 2021 confirming that the Tuscola cash withdrawals in dispute fell outside of their jurisdiction.

We consent to an order in the above terms.

....

Marc Horn

Applicant



....

J B Leitch Limited
DX 28953 Liverpool 2
(59/J0201461)

Solicitors for the Respondent

Annex 2 (2)

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
CASE REFERENCES: MAN/00BY/LSC/2019/0003

IN THE MATTER OF A DETERMINATION PURSUANT TO SECTION 27A LANDLORD AND TENANT ACT 1985

B E T W E EN : -

MR MARC HORN

Applicant

And

ROCKWELL (FC101) LIMITED (INCORPORATED IN BRITISH VIRGIN ISLANDS)

Respondent

PREMISES: FLAT 54, MILL VIEW TOWER, MILL VIEW, LIVERPOOL, L8 6AG

SETTLEMENT AGREEMENT

THE PARTIES AGREE THAT:

1. The Applicant agrees that the following charges are reasonable and payable pursuant to s27A Landlord and Tenant Act 1985 ("LTA"):

   i. 2015 £2,262.60 landlord loan and £475.00 NIC
   ii. 2017 SLC invoice dated 10 November 2017 totalling £1,860.40
   iii. 2017 SLC invoice dated 13 December 2017 totalling £1,201.04
   iv. 2017 refunds of £61.14
   v. 2017 Caretaker salary and NIC of £42,875.83 save for to £2,107.79 as detailed below
   vi. 2017 Direct telecom charges of £77.22 & £76.85
   vii. 2017 Direct Telecom overpayment of £176.28
   viii. 2018 Parklands Caretaker invoice £360.00
   ix. A proportion of the Management Fee Invoice dated 16 October 2017 in the sum of £314.68

2. The Respondent makes a concession in respect of the following charges which concession the Applicant accepts:

   a. Bank charges:

i. 2016 - £245.28
ii. 2017 - £516.72
iii. 2018 - £337.78 and £218.67

Total - £1,318.45

[£Nil payable]

b. SLC Invoice dated 22 February 2018 totalling £2,938.75 [£Nil payable]

c. A proportion of the Caretaker Salary and NIC invoice dated 14 February 2019 in the sum of £2,107.79 [£40,768.04 payable]

d. A proportion of the Management Fee Invoice dated 16 October 2017 in the sum of £314.67 [£314.68 payable]

3. The sums left to be determined by the Tribunal are as follows:

i. Accountant Fees - £4,200.00
ii. Known Defects - £10,331.00

We consent to an order in the above terms.

....J B Leitch.........

Marc Horn

Applicant

J B Leitch Limited
DX 28953 Liverpool 2
(59/J0201461)

Solicitors for the Respondent

Annex 3

Case Reference	MAN/00BY/LSC/2019/0003
Property	Flat 54 Mill View Tower, Mill View, Liverpool, L8 6AG
Applicant	Mr Marc Horn
Respondent	Tuscola FC101 Limited aka Rockwell (FC101) Limited

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Order of 26 November 2021

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1. The Tribunal makes an order to strike out four parts of the Applicant's claim because the Tribunal has Decided that these parts of the claim relate to rent and do not relate to service charges and as such the Tribunal does not have jurisdiction to consider them.

2. The parts of the claim that are struck out, pursuant to Rule 9(2)(a) of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 (S. I. 2013/1169), are cash withdrawals from the service charge account:

- In service charge year 2015 £9,883.33
- In service charge year 2016 £8,221
- In service charge year 2017 £6,490.07
- In service charge year 2018 £13,418.16

Judge Tonge