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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00BE/LSC/2012/0082
Premises:	Flat 4, The Chimes, 59 Astbury Road, SE15 2NL
Applicant:	Mr. Christopher Johnson
Representative:	In person
Respondent:	59 Astbury Road, RTM Company Ltd
Representative:	Mr. Julian Watson
Date of hearing:	16th August 2012
Appearance for Applicant:	Mr. Christopher Johnson
Appearance for Respondent:	Mr. Julian Watson
Leasehold Valuation Tribunal:	Mr. L Rahman (Barrister) Mr. C Gowman BSC MCIEH MCMI Mrs. G Barrett
Date of decision:	25th September 2012

Decisions of the Tribunal

(1) The Tribunal determines that the Applicant is liable to pay £841.15 (one sixth of the sum of £5,046.88) in respect of the service charges for the year ending 31st December 2010. This sum is payable once the Respondent serves a compliant service charge demand containing the landlords name and address.

(2) The Tribunal determines that the Applicant is liable to pay £520.50 (one sixth of the sum of £3,123.00) in respect of the service charges for the year ending 31st December 2011.

(3) The Tribunal makes the determinations as set out under the various headings in this Decision.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(5) The Tribunal determines that the Respondent shall pay the Applicant £250.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years ending 31st December 2010 and 31st December 2011.

2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. This application is dated 30th January 2012. Prior to this application being made, and unbeknown to the Tribunal, proceedings had been issued by the Respondent against the Applicant in the County Court in respect of non-payment of service charges for the years ending 2010 and 2011. On 15th November 2011, the Respondent obtained judgement for those service charges in the County Court.

4. On 27th February 2012, the County Court set aside the judgement on the ground that the Defendant was not able to attend the hearing in Court on 15th November 2011. The Court, upon setting aside the judgement, stayed the proceedings pending a determination on the Applicants application to this Tribunal.

5. On a pre-trial review hearing which took place on 28th February 2012, attended only by the Applicant, this Tribunal gave Directions. Unfortunately, those Directions were not properly sent to the Applicant and therefore those Directions were suspended and a further pre-trial review was held on 23rd May 2012. Neither party attended. Further Directions were made and the matter was set for hearing on 16th August 2012.

6. The flat which is the subject of this application is one of six in a building which was formerly a public house. The building has 3 floors, including the ground floor. There are 2 flats on each floor. The Applicants flat is on the first floor. The entrance to the top 4 flats are via a side entrance to the building. The bottom 2 flats have their own separate entrances at the front.

7. At the rear of the property is a communal garden. The garden has been fenced off and no one has access to it. So far as the relevant service charge years are concerned, no costs were incurred in relation to the garden. The front of the property is only about a metre from the front road and pavement. The front 2 flats have their own space for bins.

8. The Applicant purchased his property in 2003. It is a 1 bedroom flat. He initially lived there for a year. He then moved out and rented the property for 3 years before moving back in for another year. Since 2007 or 2008, the property has been rented out to his cousin. The Applicant states he visits the property once a month. He generally spends a few hours there in the evening. On occasions, he has visited during the day.

9. The Respondent was declared, in a decision of this Tribunal dated 7th September 2004, to be entitled to exercise the Right to Manage the building in question as from 24 September 2004.

10. Mr. Watson is a Director of the Respondent Company. He owns flat number 5 on the top floor. He purchased his property in 2000. The building was not managed for a significant period and the landlord was absent. He eventually applied to this Tribunal for the Right to Manage. There were 2 members. Himself and Ruth Wabali, who owns flats 1 (on the ground floor) and 3 (on the first floor). Mr. Watson never lived in his flat. In 2010 and 2011, he only visited the building twice, he could not recall when. Before 2010, he visited the property twice a year from 2004. Before that, he used to visit the property twice a month.

11. Mr. Watson stated he appointed Hurford Salvi Carr to manage the property in 2005. After they managed the property for 2 years, Ms. Wabali decided to manage the property herself. Mr. Watson stated that in hindsight, that probably was not a good decision because she did not have any experience of managing a property and did not in fact manage the property well, other than insuring it. Consequently, in 2009, he searched for new managing agents. He appointed Atlantis Estates as managing agents in 2010, on the basis that they were best suited for this type of property and were cost effective. He only

considered managing agents that were recommended on the "Leasehold Advice" website. He did not choose the cheapest option. He explained that after appointing Atlantis, he met and discussed with them all the works that had to be done at the property. They walked around the building and Atlantis made notes. They did not have a schedule of works as they did not have any funds.

12. Mr. Watson stated he was not involved in the day-to-day management of the building. He was here to voice what Atlantis Estates had told him.

13. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

14. The Applicant holds a long lease of the flat which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge (the tenants share being one/sixth of the service charge (clause 11 of the Particulars)). (The actual expenditure for each of the relevant service charge years is set out on page 16 of tab 5 of the bundle).

The issues

15. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) Whether the service charge for 2010 was payable as it did not contain the name and address of the landlord.

    (ii) The payability and reasonableness of service charges for 2010 relating to the following costs; insurance, light and heat, general maintenance, cleaning, pest control, sundry expenses, accountancy costs, and bank charges (the Applicant did not take issue with the management fee of £1,000.00).

    (iii) The payability and reasonableness of service charges for 2011 relating to the following costs; general maintenance, cleaning, pest control, sundry expenses, accountancy costs, professional fees, management fees, reserve funds (exterior and interior), and bank charges (the Applicant did not take issue with the costs concerning the insurance (£1,472.00) and light and heat (£202.00)).

16. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

2010 Service Charge Demand

17. The relevant service charge demand is on page 1 of tab 6 of the bundle. It states the landlord is 59 Astbury Road RTM Company Ltd and provides an address in Yorkshire. The landlord is in fact Mr. R Martin of Knightsbridge House, 197 Knightsbridge, London SW7 1RB, as correctly stated on the service charge demands for 2011 (page 4 of tab 6) and 2012 (page 7 of tab 6). The Applicant states the 2010 service charge demand is invalid. Mr. Watson stated the Respondent was effectively the landlord as the landlord could not be found. He then stated another invoice can be served, with the correct details, if it helps the Applicant. It is just a technical point. In response, the Applicant stated it was too late to serve another service charge demand as the 18 month statutory period to collect these costs had passed.

18. According to section 47 of the Landlord and Tenant Act 1987 ("the 1987 Act") the service charge demand must contain the name and address of the landlord. If the service charge demand does not contain this information, the relevant amount shall be treated as not being due from the tenant until that information is furnished by notice given to the tenant.

19. The Tribunal determine the failure to provide the landlords name and address is not a mere technicality. The law is very clear and precise on the matter. Until the relevant information is provided, the service charge is not payable by the Applicant.

20. The Tribunal do not find that the Respondent is prevented from recovering anything at all (by virtue of section 20B(1) of the 1985 Act), as argued by the Applicant. The Tribunal find the service charge demand was served within 18 months of the costs being incurred (other than the insurance for 2007-2008, dealt with below). Section 47 of the 1987 Act does not state that a service charge is invalid (where the landlords name and address is not provided), it simply states the payment is not due until the relevant information is provided.

21. Insurance (2010)

22. The amount claimed by the Respondent is £4,853.00. The Respondent states the actual cost for the year was £1,260.00 (invoice adduced). However, they have included £3,594.50 that was paid by Ms. Wabali to insure the building in previous years. Mr. Watson stated at the hearing that he too paid for the insurance for the building. He could not recall the year, but thought it may have been for 2006. The £3,594.50 includes what he and Ms. Wabali had paid and what the current managing agents had reimbursed them with. Mr. Watson stated he did not have any invoice to confirm the amounts paid by him. He also confirmed he asked Ms. Wabali for copies of the buildings insurance, but she was unable to provide any to him. He also confirmed that Ms. Wabali produced figures to the current managing agents, regarding what she had paid. He was unable to state if she had provided any invoices. He did not have any invoices to show to the Applicant. He confirmed Ms. Wabali did not issue any service charge demands whilst she managed the property.

23. At the end of the hearing, Mr. Watson produced copies of 2 insurance certificates. One was for the period 26/11/2007-25/11/2008 (£1,371.79 and issued on 26/11/2007) and the other was for the period 25/11/2008-24/11/2009 (£1,081.40 and completed on 5/11/2008).

24. The Applicant states he was happy with the figure of £1,260.00 for the cost of insurance for 2010. He accepts it is payable under the lease. However, he was not happy to pay for any insurance paid for earlier years. He was not aware that the property had been insured. He had arranged his own insurance for earlier years. He paid about £470 a year. Whenever there was a problem, he dealt with it himself. He was not happy with the late production of the 2 copies of the insurance certificates. He wanted to see the originals and wanted the opportunity to investigate their validity. He did not accept them.

25. The Tribunal determine the amount payable in respect of the insurance is £1,260.00.

26. The Applicant should not have to pay towards the cost of the insurance for the earlier years (£3,594.50). The copies of the insurance certificates for 2007-2008 and 2008-2009 account for only £2,453.19. There is no evidence, either by way of a copy of an insurance certificate or an invoice, to account for the remaining balance of £1,141.31. The 2007-2008 certificate was issued on 26/11/2007. The service charge demand was issued on 1/4/2010. Therefore the cost was not demanded within 18 months and is therefore not payable by virtue of section 20B of the 1985 Act. The same would apply for any insurance paid for 2006-2007. The 2008-2009 certificate does not confirm the "risk address", it simply states "Insured: 59 Astbury Road *RTM Company Ltd*".

27. In any event, Mr. Watson confirmed Ms. Wabali did not issue any service charge demands, she did not have any experience of managing a property, and did not in fact manage the property well. He also confirmed he asked Ms. Wabali for copies of the buildings insurance, but she was unable to provide any to him. The Tribunal accept the Applicant was unaware the property had been insured and therefore arranged his own insurance for previous years. Whilst Ms. Wabali may have paid for the insurance, given the Applicant was not informed that the property had been insured and had arranged his own insurance, the Tribunal determine the cost was not reasonably incurred. Alternatively, the Applicant would have a claim for a set-off for the costs incurred by him in arranging his own insurance.

28. **Light and Heat**

29. The amount claimed by the Respondent is £1,015.00. The Respondent states the actual cost for light and heat for 2010 was £86.42 (invoice provided). The remainder, £928.71, relates to payments made to Ms. Wabali for electricity bills she paid for previous years for the communal areas. Mr. Watson stated at the hearing he did not have any invoices for the sums claimed and he was not able to state what years the bills related to. At the end of the hearing, Mr.

Watson provided an Electricity Account Statement issued to Ms Wabali. It refers to the supply address as "L/Lords Lighting, 59 Astbury Road...". Mr. Watson clarified there was no heat in the communal area. The letter from Atlantis on page 1 of tab 4 was incorrect in that respect. He confirmed in total there were 2 outside and 4-3 inside lights.

30. The Applicant stated he accepts the figure of £86.42 as reasonable and payable. He challenged the payment for previous years as he had not been provided with a service charge demand, a bill, or even an invoice. After Mr. Watson provided the Electricity Account Statement at the end of the hearing, the Applicant stated the Statement was just a gross statement of account and did not give a date of when the statement was issued or when the bills were payable.

31. The Tribunal determine the amount payable for the lighting is £86.42. The Respondent states that was the actual cost for the year and the Applicant accepts that as a reasonable amount. So far as the cost for the previous years are concerned, the Tribunal note the absence of any bills or invoices, despite the requests from the Applicant. The Account Statement, provided at the end of the hearing, is just a summary of the account, does not provide a breakdown of the actual electricity used, the period that was covered, or clearly state the date on which payments were due / made. The Tribunal note the statement goes back to January 2008. It appears some of the costs were incurred18 months prior to the issue of the service charge demand (1/4/2010) and would therefore not be payable by virtue of section 20B of the 1985 Act. The Tribunal also note the cost of the electricity for the earlier years appears excessive in comparison to the actual cost for 2010. For the reasons given, the Tribunal were unable to attach much weight to the Account Statement.

32. **General Maintenance**

33. The amount claimed by the Respondent is £2,046.00. The Respondent states the actual expenditure for 2010 was £1,392.96. However, also included is £652.61, paid by flat 6, in relation to repairs to the communal areas. Mr. Watson referred the Tribunal to page 33 of tab 6, which shows the invoice for works that were done to the property. The invoice is dated 25/11/2010, provides a description of the actual works that were done, is addressed to Atlantis Estates, and confirms the gross total as £1,392.96.

34. The Applicant states he did not see any of the works that were carried out. There is no sensor light. He did not see any re-pointing work. The front gate had not been changed. A new front door had not been fitted. The property does not have a post box. He was not consulted on the matter therefore he should not have to pay towards the works.

35. With respect to the figure of £652.61, Mr. Watson referred the Tribunal to pages 34 and 35 of tab 6. Page 34 is a copy of an invoice dated October 2008 and is addressed to Peppercorn Residential Investments Ltd, whom according

to Mr. Watson, occupy Flat 6. The invoice is in relation to "59 Astbury Road - SE15 - Communal Carpet Package". The amount is £393.86 including VAT. Mr. Watson stated the carpet was for the communal area as the invoice referred to a "Communal Carpet Package". He stated he was unable to state if it was for the whole communal area and he was unable to state which parts of the communal area were carpeted. Page 35 is a copy of an invoice dated July 2009 and is addressed to Peppercorn Residential. It relates to works done to lights outside the entrance to the flats. The cost of the works was £258.75 including VAT. Mr. Watson stated there are lights on the outside at the side entrance. There have been occasions when they had been vandalised.

36. The Applicant stated no carpeting work had been done in October 2008. The communal area is comprised of the 2 landings (2 metres by 1 metre) and the stairs to the first and second floors. The same carpet has been there since 2003. He had rechecked the whole building in January 2012 and confirms the same old carpet from 2003 is still there. With respect to the outside lights, the Applicant stated he disputes the work but accepts that he cannot comment on it because he was not there at the time. He accepts there are outside lights but states they had never worked. However, he stated he could not state if they had or had not been fixed in July 2009.

37. The Tribunal determine the amount payable is £1,651.71 (the invoices for £1,392.96 and £258.75).

38. Whilst the Applicant disputes the particular works carried out in November 2010 (£1,392.96), the Tribunal note that the works would not have been obvious to see, especially if the Applicant had only been visiting once a month and in the evenings. For example, any re-pointing works would not necessarily be visible unless pointed out. A new front door may not be obvious, especially if it was similar to the previous door. Fitting a gate may mean refitting of the old gate. The Tribunal have been referred to an invoice addressed to the managing agents and stamped by the managing agent. On balance, the Tribunal accept the works had been carried out as per the invoice. There was no need for the Applicant to be consulted on the works as the Applicants contribution is not more than £250.00.

39. With respect to the lighting work (£258.75), the Tribunal note the invoice specifically refers to external light fittings to the entrance to the flats. The Tribunal note the Applicants evidence that he accepts that he cannot comment on the works because he was not there at the time. He accepts there are outside lights. He stated he could not state if they had or had not been fixed in July 2009. On balance, the Tribunal find there is no reason to dispute that the works had been carried out to the communal lighting.

40. So far as the invoice for £393.86 is concerned, the Tribunal determine it is not payable. The invoice for the carpeting works is addressed specifically to the occupants of Flat 6. The invoice simply states "Communal Carpeting Package" but does not state what area's were actually carpeted. Mr. Watson was unable to assist on this matter either (whether the whole area or which particular parts

of the communal area were carpeted). The "communal" package may simply refer to the particular price that was paid as opposed to the area covered. The Applicant states he had specifically rechecked the carpet in January 2012 and is adamant the carpet had not been changed. On balance, the Tribunal find the carpeting was for Flat 6 only.

41. **Cleaning**

42. The amount claimed by the Respondent is £470.00. Mr. Watson stated the cleaning was done once a month for 2 hours. The front, side, and the rear (except the garden) of the property was cleaned and swept. The stairs and the landings were also cleaned and swept. Mr. Watson referred the Tribunal to page 36 of tab 6, which shows an invoice dated July 2010 for an "Initial Deep Clean" costing £293.75. Pages 37-39 are invoices for monthly cleans for October, November, and December 2010, each costing £58.75 including VAT. (The Tribunal note these 3 invoices refer only to cleaning of the outside area). Mr. Watson stated he could not state whether the works were ever checked but he was told there would be regular visits by Atlantis. With respect to the initial clean in July 2010, he identified with Atlantis what cleaning had to be done. Although he did not return to check the work, he would be surprised if the work had not been done as he had specifically identified the works.

43. The Applicant states he did not ever notice any cleaning. He referred the Tribunal to the photograph on page 14 of tab 6 and stated it always looked like that (evidence of some weed growth). He stated everyone cleans their own landings and their own part of the stairs. There are scuff marks on the side of the stairs. The Applicant stated he had never done any weeding and he could not state whether any of the others had done any weeding. The cleaning company may have invoiced for the work but did not carry out any cleaning.

44. The Tribunal accept the initial clean took place. It is not unusual to have an initial clean and it would be surprising if the initial clean was not inspected or done.

45. With respect to the rest of the cleaning, the Tribunal note the invoices only refer to cleaning of the outside areas. The Applicant stated they cleaned the inside themselves and the invoices do not refer to cleaning of the inside. There is no evidence of any monitoring of the monthly cleans. The photographs provided by the Applicant do not show the lack of any cleaning on the outside areas. Whilst there is evidence of some weed growth in the photographs, if no weeding or cleaning had been done, and the Applicant did not state that they cleaned or weeded the outside area, the outside area would have been in a far worse state than they appear in the photographs. Therefore, the Tribunal accept the outside area was cleaned and weeded on a monthly basis. However, given the size of the outside communal space, the Tribunal determine, based on the Tribunals own knowledge and experience of such matters, the outside cleaning would take approximately 30 minutes at a cost of about £15.00, including VAT, per month.

46. The Tribunal determine the amount payable is £338.75 (£293.75 for the initial clean and a total of £45.00 for the months of October, November, and December).

47. **Pest Control**

48. The amount claimed by the Respondent is £510.00. The Respondent claims this relates to an issue with cockroaches in the communal areas. The invoice copy is on page 40 of tab 6 and is dated 4/10/2010. Mr. Watson stated he knew the building previously had problems with cockroaches. One of the reasons for acquiring the Right To Manage was because of a cockroach problem. He treated his own flat at his own expense in 2004 and 2010. He reported the matter to Atlantis in 2010. He did not chase up to find out what Atlantis did as a result of his complaint. He confirmed there were no problems at present with cockroaches.

49. The Applicant stated he was not aware of any pest issues. He did not have cockroaches in his flat. His flat was never treated. The Applicant states if there were a problem with cockroaches then all the flats would have needed treatment, simply cleaning the communal areas would not eradicate the problem. The Applicant stated he had a problem with cockroaches in another property. There, he was asked to vacate the property for at least 1 day for the treatment. Dust was spread and traps were set.

50. The Tribunal determine £510.00 is payable. Mr. Watson had raised issues with cockroaches in the past. It is not unreasonable to accept that works had taken place to deal with the problem. An invoice has been provided. The cost does not appear to be excessive. It is not necessary to enter and treat each flat, depending on the severity and the location(s) of the problem within the building. Traps can be placed in communal areas to help eradicate the problem.

51. **Sundry Expense**

52. The amount claimed by the Respondent is £177.00. The Respondent claims £141.00 is the Company set-up fee, £1.00 is for Companies House search, £4.00 is for the Land Registry search, and £30.00 is the cost of the Annual Returning filing fee (the Tribunal note this equates to £176.00). Mr. Watson stated he found the inclusion of these costs odd. He did not know why the Company set up fee was included in the service charge. He did not know what the £1.00 and £4.00 related to. He stated he used to complete the Annual Returns and pay the fee himself. He had now handed this over to Atlantis.

53. The Tribunal determine the costs associated with the Company is not recoverable. No invoices have been provided. Mr. Watson accepts the costs should not have been included in the service charge.

54. **Accountancy Costs**

55. The amount claimed by the Respondent is £720.00. The Respondent states this is the amount charged by the accountants to prepare the service charge statement, review all information, and respond to any queries which may arise. The Respondent states it was not budgeted for correctly. Mr. Watson stated he assumed the work was done by external accountants. He did not have any invoice. He was unable to explain exactly what work was done or the time spent in preparing the account. He was unable to comment on whether the figure was excessive or not as he did not have any experience of such matters.

56. The Applicant stated the fee was excessive compared to fees he had paid for other similar properties. He stated he has a one bedroom flat in a block containing 6 flats in Croydon. They charge £200 for their accountancy fees. He did not have any evidence with him at the hearing.

57. The Tribunal determine the amount payable is £200. The Tribunal note the absence of any invoice to show exactly what work was done and the time spent in preparing the accounts. Whilst the Respondent states the budget was underestimated for 2010, the Tribunal note the budget was also £200 for 2011. The Applicant states based on his own experience the figure appears to be excessive. Based on the Tribunals own knowledge and experience of such matters, and the evidence before the Tribunal, the Tribunal determine a charge of £200 as reasonable in this case.

58. **Bank Charges**

59. The amount claimed by the Respondent is £20.00. The Respondent states such charges are not included within their management fee in order to be as transparent as possible regarding expenditure. Mr. Watson stated it was not unusual for management companies to charge for such expenditure. He stated he did not have any evidence to confirm that such a charge had been incurred or paid.

60. The Applicant states the management fee should include such costs.

61. The Tribunal determine it is not unusual to charge leaseholders such expenses if incurred. However, there is no evidence of such charges being incurred or paid therefore the amount claimed by the Respondent is not payable.

2011 Service Charge

62. **General Maintenance**

63. The amount claimed by the Respondent is £309.00. Mr. Watson referred the Tribunal to pages 41 and 42 of tab 6. Page 41 relates to the payment of £146.88 to Peppercorn Group for emergency repairs to a door. It is unclear

whether this relates to a communal door or the door to Flat 6 (occupied by Peppercorn Group). However, Mr. Watson stated he could only say that the repair must have been to a communal door as each flat was responsible for its own door. He accepts that Atlantis were managing the property at the time and were responsible for repairs. He was unable to explain why Peppercorn Group paid for the repair. He was also unable to provide an invoice for this. Page 42 is an invoice addressed to Atlantis, for £144.00, for the cost of the replacement of the door lock on the entrance door and 6 keys. Mr. Watson stated he was unable to account for the remainder of the balance of £18.12. He could not find any further invoices.

64. The Applicant stated he did not recall the communal door lock being replaced in 2011 or being given any replacement keys. He stated he would not have discussed such a matter with his tenant. However, he stated he still had the same entrance key as before. So far as the cost of the emergency repairs to the door is concerned, the Applicant states there is no invoice and therefore the amount is not payable.

65. The Tribunal determine the amount payable is £144.00 for the cost of replacement of the entrance door and the replacement keys. The Respondent has provided an invoice, which is stamped to authorise the payment. The Tribunal note the high turnover of tenants can lead to keys going missing and security concerns. On balance, the Tribunal accepts this expenditure.

66. The Tribunal determine the cost of the emergency repairs to the door (£146.88) is not payable. As pointed out by the Applicant, there is no invoice for this. Furthermore, it is not clear whether repairs were done to a communal door. The cost was paid by Flat 6, therefore the Tribunal assume it was the door to Flat 6 that was repaired. Had it been a communal door, given Atlantis were managing the property, the expectation would be that Atlantis would have been invoiced for the work and Atlantis would have made the payment.

67. There is no invoice or explanation to account for the remaining balance of £18.12. In the circumstances, the Tribunal determine this also is not payable.

68. <u>Cleaning</u>

69. The amount claimed by the Respondent is £285.00. Mr. Watson referred the Tribunal to pages 43, 44, 45, and 46 which are copies of invoices for the external cleaning for the months of January, February, March, and April 2011 (£60.00 per month including VAT). Also included is an invoice on page 47 concerning the cleaning of excrement, at a cost of £45.00.

70. Both sides relied on the same arguments as for the previous year's cleaning costs. The Applicant stated he cannot comment on the invoice for £45.00 and would accept the cost.

71. For the same reasons given for the cleaning costs concerning 2010, the Tribunal determine the amount payable is £15.00 per month. The Tribunal determine the total amount payable is £105.00 for the year (£60.00 for 4 monthly cleans and the additional £45.00 which the Applicant accepts).

72. Pest Control

73. The amount claimed by the Respondent is £330.00. The Respondent states the relevant invoices are enclosed and which clarifies the treatment for cockroaches in the communal areas. The Respondent accepts each flat is responsible for any costs in relation to pest issues within their own flats. The invoice on page 48 of tab 6 relates to Flat 1 only and not to the communal areas. Mr. Watson agrees this expense should not have been included in the service charge. The invoice on page 49 is an exact copy of the invoice on page 48. The Tribunal determine this amount (£330.00) is not payable.

74. Sundry expenses

75. The Respondent claims £13.00 for the purchase of a company file. There is no invoice for this item. Mr. Watson stated he was unable to explain why this item of expenditure was included in the service charge. The Tribunal determine this is not payable.

76. Accountancy costs

77. The Respondent claims £720.00. Both sides put forward the same arguments as for the previous year's accountancy costs. For the same reasons given as for the 2010 accountancy costs, the Tribunal determine the amount payable is £200.00.

78. Professional Fees

79. The Respondent claims £186.00 for the legal fees incurred as a result of the Applicants failure to pay service charges and the Respondent starting proceedings at the County Court.

80. The Applicant states he raised queries concerning the expenditure with Atlantis after receiving the first service charge demand in 2010. He states he was told to pay the service. Atlantis did not deal with his queries. The Applicant states if they had dealt with his queries, all this could have been avoided. Only after starting proceedings at this Tribunal, Atlantis provided the information he had requested.

81. The Tribunal determine this fee is not payable. The Tribunal accept the Applicant did not receive the necessary information prior to starting proceedings at this Tribunal. The Applicant has substantially won in his

application to this Tribunal. In the circumstances, the Tribunal find the fees were not reasonably incurred by the Respondent.

82. Management Fees

83. Atlantis Estates claim £1,311.00. This is an increase of £311.00 from the previous year. They state the increase is in accordance with the agreement they have with the RTM Company and the additional charges for providing emergency out of hours service (£36.00) and the use of an online system specific to this development (£15.00). Mr. Watson states this is a reasonable amount. He confirmed none of the other leaseholders are paying service charges except himself and the Peppercorn Group. The others are bad payers, including Ms. Wabali, who remains a Director of the RTM company.

84. The Applicant states the increase is not justified. There has been neglect and lack of management. He was agreeable to the previous year's fee of £1,000.00, although even that appeared on the high side. He has lost trust in them as they failed to provide information when requested. They tried to bully him. The 2010 service charge demand did not contain the landlords name and address.

85. The Tribunal determine the amount payable is £1,000.00. Using the Tribunals own knowledge and experience, this appears to be a reasonable amount in the circumstances of this particular case and based on the service provided by Atlantis. The Tribunal note the fee charged for the previous year was £1,000.00. There was no evidence to justify the increase. Almost everything was the same as for the previous year. The Tribunal note that duplicate invoices have been provided, other invoices were missing, and some of the charges should not have even been included in the service charge.

86. Reserve Fund

87. The Respondent claims £500.00 for exterior works and £500.00 for interior works. The Respondent states the lease does not state reserve funds cannot be held. It is the Respondents opinion that this is the most effective way to comply with the terms of the lease concerning internal and external redecoration. Mr. Watson stated the lease does not provide for a reserve fund but the lease allows the landlord, at his discretion, to charge this. Mr. Watson referred the Tribunal to clauses 18 and 19 of Part 1 of the Lease.

88. The Applicant states the Lease does not clearly state that the landlord can have a reserve fund.

89. The Tribunal determine this charge is not payable. There is no provision under the lease for a reserve fund. Atlantis do not claim this is payable under the Lease, they simply state the Lease does not state a reserve fund cannot be held. Mr. Watson agrees the Lease does not specifically make provision for a reserve fund. Clauses 18 and 19 of Part 1 of the Lease relate to "The Interim

Service Charge" and "The Service Charge". Whilst it may be prudent to have a reserve fund, unless it is clearly stated in the lease, it is not payable.

90. Bank Charges

91. The Respondent claims £20.00. Both sides relied on the same arguments as for the previous year. The Tribunal determine it is not unusual to charge leaseholders such expenses if incurred. However, there is no evidence of such charges being incurred or paid therefore the amount claimed by the Respondent is not payable.

Application under s.20C and refund of fees

92. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees (£250.00) that he had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

93. At the hearing, the Applicant applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

94. The Tribunal note the Applicant had been substantially successful in his challenge as the Tribunal has found a large amount of the service charge to be not payable. The Tribunal accept the Applicant was only able to have his legitimate queries dealt with after starting proceedings at this Tribunal.

Luthfur Rahman

Chairman: _____

Date: 25th September 2012.

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

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

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.