10290

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: MAN/00CX/LSC/2014/0058** **MAN/00CX/LUS/2014/0001**
Property	**: 12/14 Crossbeck Road Ilkley West Yorkshire**
Applicant	**: 12-14 Crossbeck Road RTM Company Ltd**
Representative	**: Directors Ms. Lindsay Gledhill and Ms. Nicole De Mowbray**
Respondent	**: Mr. John Markam**
Representative	**: self represented**
Type of Application	**: Service Charge determination s27A Landlord and Tenant Act 1985; s94 Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**: Mr. John Murray** **Mrs Jenny Jacobs**
Date and venue of hearing	**: Bradford Tribunal Office, Phoenix House Ruston Avenue, Thornbury Bradford BD3 7BH** **22 August 2014**
Date of Decision	**: 23rd September 2014**

DECISION

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DETERMINATION

1. The Respondent shall pay to the Applicant Service Charges on account of £572 plus interest of £1.55 for Flat 1 and £572 plus interest of £1.55 for Flat 3 for the year 2014

2. The Respondent shall pay the sum of £2900 of uncommitted service charges pursuant to s94 Commonhold and Leasehold Reform Act 2002 forthwith.

3. The Respondent shall pay the Applicant's costs in the sum of £466.66

INTRODUCTION

1. The Applicant made two separate applications in respect of 12-14 Crossbeck Road, Ilkley ("the Property". The first application sought to determine the Respondent's liability as lessee to pay service charges under s27A Landlord and Tenant Act 1985; the second application was for a determination as to what funds, if any, should be transferred from the Respondent (the former Freeholder) to the Applicant pursuant to s94 of the Commonhold and Leasehold Reform Act 2002.

2. The Applicant is a Right to Manage (RTM) Company, which has been responsible for managing the Property since 1 November 2010.

3. The Respondent has leases for two flats, numbered 1 and 3. He partially lets out Flat 1, and lives in Flat 3. He was previously the Freeholder of the building, and was responsible for management of the premises between 8 November 2006 and 31 October 2010.

4. The Parties were before the Tribunal on 7 November 2013 when previous service charges were sought against the Respondent for the years 2011, 2012 and 2013 (on account), and for a determination that the Respondent was in breach of covenants under his lease. The Tribunal found for the Applicant on all counts.

THE PROCEEDINGS

5. Directions were issued by Judge Holbrook. The parties have complied with the Directions save that the Respondent delivered his bundle some fourteen days late.

6. Two separate bundles were prepared in respect of each application.

7. A Tribunal was appointed and an inspection of the Property took place at 10am on the 22nd August. The Applicant was represented by two directors (and lessees) Ms. Gledhill and Ms. De Mowbray, and the Respondent Mr. Markham also attended.

8. The substantive hearing of the application was held on 22 August 2014 at 11.30am. At the substantive hearing, the Applicant was represented by the Directors named above. The Respondent appeared in person.

THE PROPERTY

9. The Property 12 – 14 Crossbeck Road forms part of a row of imposing Victorian terraced houses built at the foot of Ilkley Moor. It was originally constructed as two adjoining houses in the middle of the terrace, which whilst in the ownership of one individual, was converted into separate dwellings. There are now five flats and a maisonette intermingled across the five stories of the two former houses.

10. One flat, (flat four) spreads over the top floor of numbers 12 and 14, and is accessed using the communal staircase and entrance door of number 12. Flat number 1, is not self-contained but has a number of separate lockable rooms on the cellar ground and first floor. It also has access via the front door of number 12. The maisonette, situated in number 14, is self-contained in terms of communal space. It has a flat above (flat four) and below.

THE LEASES

11. Flat 1 is held under a lease dated 26 May 2006 for a term of 999 years. Flat 3 is held under a lease dated 14 April 1992 for a term of 999 years, at a ground rent of £25 per annum, increasing by that amount every 25 years. The leases are in very similar terms, and provide in Schedule 8 for the Lessor to maintain repair and renew and decorate and keep in good repair:

    (a) external walls, and timbers, foundations gutters and rain water pipes, boundary walls, paths and the garden area.;
    (b) Gas and water pipes, tanks drains and electrical lighting and wires in the Reserved Property and the Flats
    (c) The common drains sewers manholes and inspection chambers serving the flats
    (d) Halls passages staircases (which are also to be refurbished, heated and lit)

12. The day to day management of the Reserved Property might be delegated to a Managing Agent.

13. The Lessor or Agent is obliged to keep proper books or records of all costs, charges and expenses incurred by him in performing his obligations, and an account take at least once a year.

14. The Lessee to each lease is obliged at clause 3(b) to pay a reasonable proportion of all expenditure reasonably incurred by the Lessor in connection with the repair, management maintenance of and the provision of services for the Flat and the Reserved Property, and to pay interest at 4% above base rate if not paid within 21 days.

15. The Lessee is further obliged by this clause to pay all reasonable fees charges and expenses payable to any Surveyor, Solicitor, Accountant, Valuer Architect or other person whom the Lessor may from time to time reasonably employ in connection with the management of the Property including the computation and collection of rent, the cost of preparation of the account of the charges and the collection thereof and if any such work shall be undertaken by the employee of the Lessor then a reasonable allowance for the Lessor for such work.

16. The Lessee to each lease is further obliged to pay into a Reserve Fund, and to contribute to insurance of the Property.

APPLICATION UNDER S27A(1) LANDLORD AND TENANT ACT 1985

THE LEGISLATION

17. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 02 which reads as follows:

s27A Liability to pay service charges: jurisdiction.

(1)An application may be made to a [Leasehold Valuation Tribunal]{now First Tier Tribunal (Property Chamber)} 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]{now First Tier Tribunal (Property Chamber)} 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.

(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 of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a [Leasehold Valuation Tribunal]{now First Tier Tribunal (Property Chamber)} in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

THE EVIDENCE AND SUBMISSIONS

18. The Applicant sought service charges of £572 on account for the Accounting Year 2014 for each of the Respondent's flats. A service charge demand dated 5th June 2014 stated that the Respondent is obliged to pay 20% of insurance costs for each flat, but the Applicant would be prepared to accept 1/6th, and a "reasonable proportion" of other costs, determined as 16%.

19. The Applicant stated that the request for service charge on account, of £572 per flat, was based upon the previous year's spend. A budget had been set, which included provision for anticipated repairs and maintenance, and insurance charges. The Applicant had determined what the reasonable contribution of each flat should be, based on usage of facilities. They informed the Tribunal that they were seeking contributions to the sinking fund of £300 per annum, which would partially pay redecoration every five years in accordance with the leases.

20. The Applicant made a request to the Tribunal for a determination pursuant to s27A that the actual expenditure to date in 2014 was reasonable, in order to avoid further objections to these amounts at the end of the financial year. There was no mention of this specific request in the application form. The Respondent objected to the request as no notice had been given. In the circumstances, the Tribunal was unable to determine these amounts.

21. The Respondent had no particular comment on the level of payment sought for service charges on account, and suggested at one stage in his submissions that the Applicant would have been entitled to seek payment for years following 2010 along similar lines to what his expenditure whilst managing the property had been – which was a figure greatly in excess of the figure sought.

22. The Respondent objected as to the principle of paying any service charges to the Applicant, stating that the Applicant was failing to consult with lessees by not holding meetings. He said he was of the view that the Applicant was not a valid RTM company as it failed to hold general or annual meetings, in accordance with its Articles of Association, and guidance provided by the Leasehold Advisory Service.

23. He pointed out that he has the largest contribution to pay towards service charges, but has no say in how they are spent. In his view, the Right to Manage principle dictated that meetings should take place on a regular basis so that there is not a dictatorial freeholder. He asserted that he had no desire to be the freeholder, which had taken a great deal of time, and resulted in his spending much of his spare time and holidays working on the property. His main objection was that he should have a say in how the property would be managed, and expenditure incurred.

24. The Applicant stated that the Respondent had been written to and told of his statutory rights to call a meeting. As a gesture of good faith they had called a residents' meeting in June, but it had not resolved any issues. They felt that they had consulted with him in writing over and beyond their obligations. When he had managed, he held two meetings in 2007, but none thereafter, insisting that all communication be by email.

25. The Applicant further sought a declaration that interest of £1.55 per flat was payable on the late payment of service charges for 2013 which was paid in full in June, of £1.55 per flat. Mr. Markham did not object to that amount, although he felt it was petty.

THE DETERMINATION

26. The Tribunal has jurisdiction under s27A to determine whether service charges are payable, and who they are payable to.

27. The RTM Company is authorised to manage the property, having been duly appointed in law, to carry out services under the lease and to collect service charges.

28. The Respondent has paid his service charges to the Applicant from 1 November 2010 to 2013. He has made no objection to the level of the proposed amounts.

29. The Respondent made the same submissions about consultation to the Tribunal in 2013. He appears to be confusing the consultation arrangements necessary under s20C Landlord and Tenant Act 1985 and the good practice suggested by the Leasehold Advisory Service. The Tribunal has pointed out to him previously that whilst company law breaches may give rise to other remedies, they are not under the jurisdiction of the Tribunal. If the Respondent objects to how the Applicant manages the Property there are steps he can take both as a shareholder and a leaseholder, but not within the present proceedings.

30. It was evident to the Tribunal that the parties found it difficult to be in the same room as each other; conversation would rapidly descend into unproductive bickering. It was understandable that the Applicant would wish to put communications in writing, and they were complying with both the provisions of the lease and statutory requirements for issuing demands. There was evidence of correspondence being sent to the Respondent which he had not replied to.

31. The Tribunal finds, that in the absence of any specific objection to the demand (which is in any event only for payment on account) of the Service Charge demand for 2014 of £572 per flat was reasonable, and that interest of £1.55 per flat for late payment of service charges is payable in addition.

APPLICATION UNDER S94 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

32. The relevant legislation is contained in s94 Commonhold and Leasehold Reform Act 2002 which reads as follows:

s94 Duty to pay accrued uncommitted service charges

(1)Where the right to manage premises is to be acquired by a RTM company, a person who is—

(a)landlord under a lease of the whole or any part of the premises,

(b)party to such a lease otherwise than as landlord or tenant, or

(c)a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2)The amount of any accrued uncommitted service charges is the aggregate of—

(a)any sums which have been paid to the person by way of service charges in respect of the premises, and

(b)any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3)He or the RTM company may make an application to a [leasehold valuation tribunal] *{now First Tier Tribunal (Property Chamber)}* to determine the amount of any payment which falls to be made under this section.

(4)The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

34. s94 Commonhold and Leasehold Reform Act 2002 was considered by the by HHJ Mole QC sitting in the Upper Tribunal in detail in the case of **OM Limited and New River Head RTM Company Ltd**, in August of 2010. Both parties were familiar with the decision and both relied upon the judgment in support of their respective submissions.

35. In that case an Applicant RTM Company sought an order under s94 for the return of £121,742.39, plus interest, from the previous management company. The sum in question had been the subject of an earlier Tribunal decision made by some of the lessees of the managed block under s27 Landlord and Tenant Act 1985, when it had been determined those charges were unreasonable.

36. The RTM Company argued that because the former managing agent was not entitled to those monies, they could not be considered to be "accrued committed service charge".

37. HHJ Mole overturned the first instance decision, determining that s94(1) could only apply to accrued uncommitted service charges "held" by the landlord or manager on the acquisition date; not what he has not been paid, or had at one stage but no longer has.

38. At paragraph 24 he stated that "...there is to be no argument so far as the payment is concerned about whether or not the charges are in fact justifiable and reasonable service charges, if they were paid "by way of service charges", they are service charges for the purposes of s94.... They also have to be uncommitted service charges, so if they have been paid or committed to a particular management debt or function they do not fall within s94".

39. HHJ Mole commented, obiter, at paragraph 23 "Quite how broadly "held by him" should be interpreted in any particular case will depend upon the facts of that case. In dealing with an argument that appears to have troubled the LVT, I would have little hesitation in deciding that such charges were "held by him" within the section in a case where a manager has for his own reasons, dishonest or not, decided to put the service charges in cash in a box under his bed. That will be a matter for the LVT to determine under s94(3)."

40. In the judgment of HHJ Mole, the intention of the section was that whatever funds were held in the bank account should be passed over.

THE EVIDENCE AND SUBMISSIONS

41. The Applicant accepted in its submissions that the Tribunal cannot assess whether service charges have been reasonably incurred in line with s19 Landlord and Tenant Act principles; that is a matter for individual lessees, who could make such an application under s27A at any time and those monies might only be returned to them.

42. The Applicants assert that many of the service charges allegedly paid by the Respondent were not properly deductible, as he was under no obligation to pay them, on behalf of the lessees, as he had no contract with any Third party.

43. They asserted that he had wrongfully re-appropriated funds, by paying private debts, making ex gratia payments, and paying himself for jobs he has not done, or not done well, or paying himself an excessive amount.

44. They pointed out that the money he has paid to himself had increased exponentially over the 3 and a half years he managed the property, from 0.005% of the income in 2007, to 12.9% if 2008, 40.7% in 2009, to almost all of the service charge, 94.8% in the final year.

45. They objected to the Respondent charging for management of the premises, where there is no provision in the lease to enable him to do so, and they had not agreed he might do so.

46. They were of the view that he had looked to dissipate funds looking to reduce his own liability to pay service charges for the period of his management.

47. The Applicants had written to the Respondent in 2010, to meet to discuss the accounts, and ascertain where the money had gone. No such meeting was held. He had also been notified that Lessees were uncomfortable about his offsetting his "handyman" charges against his service charges, as they felt there was a lack of accountability.

Evidence for Respondent

48. The Respondent was directed by the Tribunal to disclose copy bank accounts showing any funds held at the time of transfer. He stated that the account was in debit at the time of transfer, so did not produce any bank statements.

49. In his evidence the Respondent confirmed that he had never held a separate bank account for service charge accounts. He had used a combination of computer programmes to account for the monies, and consequently monies held on behalf of the Lessees were at all times, intermingled with his own funds in his Halifax current account.

50. The Respondent in his submissions had made it clear that he had taken legal advice, and relied upon that advice, which was that he had no obligation upon him to hand over funds at the end of his tenure as manager.

51. The Respondent told the Tribunal that in his role as a Police Officer he was required to have unsupervised access to high security buildings; his personal accounts and circumstances were annually vetted by the Police and his personal integrity were paramount to him.

52. He explained that he had taken over the freehold of the property because there had been issues with the previous freeholder. He had lived there since 1988, and was not happy with how works had been carried out, often to a poor standard.

53. He had not intended to buy the freehold until the tenant of Flat 1, June Beattie came to see him in tears as there was a plan to take over freehold by another lessee who had been in negotiations, and she was unhappy about this. The Respondent contacted the freeholder and subsequently agreed to buy flat and freehold.

54. When the sale had gone through, the Respondent said he had made it clear he would run the freehold with the consent of the people living there. The Respondent held two meetings in 2007, and consulted with Lessees, about the priority of works to be carried out. There were no further meetings after this.

55. In relation to service charge collections whilst he was the freeholder, the Respondent admitted that they had not been made in accordance with leases. Prior to his tenure, all six flats had been paying the same amount, which had led to an imbalance whereby the maisonette and garden flat were subsidizing other properties for services and works they did not benefit from. This was felt to be unfair so it was agreed to rectify, and arrange a refund.

56. It was agreed to put together a sinking fund for those residents (in number 12) that shared the staircase.

57. Everyone had agreed to pay service charge at the initial meeting. There were cleaners and gardeners engaged; the Cleaners had done a poor job, and were charging for 2 hours work whilst attending for only 20 minutes. New cleaners were sourced but they were still unsatisfactory. The Respondent therefore decided to clean and garden himself, from 2007/8. He said that there had been no criticism of his doing gardens; most" invoices" recorded his hours spent.

58. The Respondent said that he used his personal Halifax account to administer the service charges. He still used that account. He said that he had "tried" to use it purely for the service charges, but it proved complicated, as he was spending his own money and "reimbursing" himself.

59. He said that irrespective of the bank account he was using, he recorded transactions on a Microsoft money manager software package, and that was effectively the "account". He said that it was duplicated with an Excel spreadsheet. There were two "pots", one with money for whole house, others for the side of the house with the staircase – number 12.

60. He gave an example of works he had carried out to the back door, when he only charged £450. In his view this was reasonable. He said that no one in the property was unaware he was charging for the works.

61. He said that when he took over the Freehold he had a vision for the property. He wanted works to be carried out to a high standard and did not want to see another series of botch jobs. He wanted wiring done properly, sunk into the walls, to replace the ugly conduit hiding wires.

62. He understood that if he was replacing existing wiring he would not need "Part P certification" as a qualified electrician, as he was replacing like with like.

63. He said that he did not realize the service charge account was going into deficit, but having taken advice understood he could spend the money as long as it was spent reasonably, and wanted to influence what works would be done and how they would be done whilst he could.

64. He charged gardening and cleaning at £12.50 per hour and other works at £15 per hour.

65. The Applicants challenged the Respondent on his paying his own tenant to do gardening, which they felt was inconsistent with proper conduct bearing in mind duties as a trustee. There might be considered to be a conflict of interest. The Respondent said that she had spent four days weeding; he had been embarrassed that she had only been paid £150, and wanted to pay her more.

66. In relation to the Management charges he had made, the Respondent was unable to point to a contractual provision enabling him to charge; he said that Harewood Housing had managed previously, and had charged £1500-1600 per annum. He said that they had done very little, and when challenged paid a three month rebate. The Respondent felt that if that was the going rate for management, he would charge £400 per annum.

67. The arched window on the staircase was charged as a service charge, but as the Respondent said it was not paid for, he had removed it. The Applicants had to arrange to install a new window and the old window was left in the light well. There had been an outlay of £500 for the window itself, which was included in the charge for supplying and fitting the window (£1250), and a further charge of £300 for glazing and painting; the total cost was in the region of £1550.

Evidence for the Applicant

68. The Applicants submitted that as the Respondent was in control of a trust fund, and was not obliged to pay those monies out, then those monies could not be an "incurred cost".

69. They pointed out that when gave him a claim letter in May 2010, that they intended to seek the transfer of the freehold and establish a Management Company; it was at that point that the Respondent went to a solicitor and took the advice that he relied upon to run down the accounts.

70. They said that it was never agreed that the Respondent would be the handyman. They did not feel that they could challenge this at the time, as he was the Freeholder. Nicole De Mowbray had actually offered to clean the Property for free, but there was no response to this offer.

71. It was never agreed he would charge for management, and indeed had not done previously.

72. They were concerned that projects went on for too long without completion, and they wanted to know where money was going. His cleaning was not satisfactory; the Respondent's DIY habit meant he was constantly drilling and making a mess, which a tradesman would have cleared up; they were being charged again for his cleaning. The electrical works that the Respondent carried out should have been done by an electrical engineer in their view.

73. Works were not completed; for example there was no replacement doorbell although it had been charged for. There was evidence that a number of jobs took a long time to complete, or were unfinished. For instance there was a cardboard window in for two years, and no wall at the front for a long time. The front door was left unfinished for a long period. Had these jobs been properly contracted, they would have been completed within a reasonable period of time.

74. The railings on the front wall were cut through, irreparably damaging them. The Respondent was charging £15 per hour, taking all the paint off and then re coating them; he would then leave the job for six months. They were painted in 2010. Front gates had not been done. Paint was seen to be peeling off the galvanized hand rail now.

75. They objected to his buying fence panels in May, which were never ultimately erected, when he became aware of the imminent transfer of management on 23 May. They questioned where the tools that the Respondent had purchased over the years had gone, but no answers nor tools were forthcoming.

    The Applicants were concerned that June Beattie, who was paid £150 for weeding, is the Respondent's tenant. She had regularly done light gardening work without charge. She had lived there for many years and was retired. She has never previously been paid by the Respondent, nor have the Applicants ever paid her.

76. They pointed out that the works to the front door, which took a long period of time, came to over £1,000. Had a contractor submitted quotes for this amount, they suggested that the Respondent would not have agreed to it, as he questions and scrutinizes everything that they spend.

77. They had two meetings with the Respondent in 2007, but thereafter he preferred to communicate by email.

78. The Applicants were concerned that the Respondent had never told them he was not actually paying in money to a separate account. They felt that he had failed in his obligations as a trustee. If had answered their questions in 2010, they would have had different questions to ask at the hearing. He could not be allowed to financially benefit, which he was doing.

79. The Respondent in closing felt that he was under criticism because of how he had conducted his accounts, but the Microsoft Money Manager account showed that he was contributing to service charges. The monies were isolated and documented in that account.

THE DETERMINATION

80. The decision in **New River Head** makes it clear the Tribunal cannot challenge reasonableness of service charges actually incurred. Objections to those charges are a matter for individual Lessees, and the RTM company cannot take over those objections, or suggest that any monies paid out for service charges, even should it appear unreasonably spent, should be paid to them.

81. The Respondent was ordered to produced bank statements if holding any service charge monies, but did not do so asserting that the account had been run down to a debit balance. It was clear from the evidence however that there were likely to be funds in the Respondent's bank accounts on the 31 October 2010, as the Respondent did not account for the service charges until many months later. He did not therefore comply with the Direction of the Tribunal.

82. The Respondent paid monies held in trust for others into his own Halifax bank account and appeared to treat those monies as if they were his own. The monies clearly ought to have been held and accounted for in a separate bank account in accordance with basic principles of fiduciary trusts.

83. The Tribunal determines therefore that the Respondent was holding money in his account on the 31 October 2010 in trust for the Lessees, including himself.

84. The Tribunal was invited to find that he was holding all of the money that he had credited to himself for services delivered, on the premise that he had no contract with himself and was not therefore committed to pay the monies.

85. In the judgment of the Tribunal, the absence of a formal contract would not prevent the Respondent from being paid for his services, which he carried out over a number of years and charged for. He did the works on the expectation that he would be paid for those works. Whether the works were done well, and whether he overcharged, are correctly the subject matter of separate proceedings.

86. The individual Lessees do of course have a right to apply to the Tribunal under s27A against the Respondent to ascertain whether the service charges are reasonable and reasonably incurred under s19, and it is noted by this Tribunal that many of the charges raised by the Respondent appear excessive, with many hours being spent on relatively straightforward jobs, at a not insubstantial hourly rate for an enthusiastic amateur.

87. The Respondent provided a spreadsheet of his Halifax Bank Account at pages 194 – 195 of the s94 Bundle on 31 October 2010. This shows that the Service Charge "account" was run down from £5176.11 to a negative balance of £1676.92. Some of it was for legitimate expenditure he had incurred, (such as B and Q, and Costco) but not accounted for until the last minute.

88. However it is clear that some of the charges were not payable, and consequently would have been held by the Respondent where the services were delivered.

89. The Tribunal therefore determines that the following areas of expenditure did not amount to "committed" service charge. There was no obligation on the Respondent to pay for the services, so the monies were effectively retained by him.

90. There was no invoice, or contract with the Respondent's tenant June Beattie, for gardening. There was no independent evidence therefore that there was any "commitment" to pay the charges to a retired lady, who had apparently regularly gardened the area in question and would of course benefit from it. The Tribunal determines that £150 is repayable.

91. The Tribunal heard that the Respondent had taken out the arched window that he had installed, on the basis that he had not been paid for it, a matter over which he has been adamant. In the circumstances £1550 was not "committed "service charge. At this cost there ought to have been a s20 consultation exercise in any event.

92. The management fee: The Respondent had never budgeted for this amount, and had never charged a management fee previously. There was no ability to charge under the lease and the Tribunal determines that the sum of £1200 is repayable to the Applicant.

93. The Respondent shall therefore pay the sum of £2900 to the Applicant.

Costs

The Tribunal determines that the Respondent should pay the Applicant's costs being Tribunal Feels of £315, postage of £24.44, and paper and ink of £107.22, totaling £466.66. Whilst only partially successful with the application under s94, the costs would be payable in relation to the service charges in any event.