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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AE/LSC/2015/0118**
Property	:	**46 Danes Court, North End Road, Wembley, Middlesex HA9 0AE**
Applicant	:	**Elsa Alexander**
Representative	:	
Respondent	:	**LKB Investments Ltd**
Representative	:	**Ms K Charles of counsel**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Tribunal Judge S Brilliant** **Mr M Taylor FRICS** **Mr J Francis QPM**
Date and venue of hearing	:	**1 September 2015** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**31 December 2015**

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 and administration charges payable by her in respect of the service charge years ending 31 December 2012, 31 December 2013, 31 December 2014 and 31 December 2015.

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

The hearing

3. The hearing took place on 1 September 2015. The Applicant appeared in person, assisted by her son Mr Mario Alexander. The Respondent was represented by Ms K Charles of counsel. She called Ms Archi Minhas, a senior property manager employed by Rendall & Rittner Ltd, the Respondent's managing agent. Ms Charles also relied upon the written evidence of Ms Sue Allaway, a manager employed by the Respondent's in-house insurance intermediary, Kidlington Properties Ltd.

4. At the end of the hearing the Respondent was directed, amongst other things, to send to the tribunal by 15 September 2015 documentary evidence, if any, that Rendall & Rittner Ltd was a corporate member of RICS and the Respondent's closing submissions. The Applicant was directed to send her closing submissions by 29 September 2015. Both parties duly provided closing submissions and, subsequently, short responses to the other party's closing submissions.

5. The tribunal reconvened on 20 October 2015 in the absence of the parties to consider its decision.

The background

6. The property which is the subject of this application ("the flat") is a second floor one-bedroom flat in a purpose built block within a substantial 1930's development containing a number of blocks and estate roads, close to Wembley Stadium ("the development"). The development consists of Danes Court, which contains 80 flats, and Empire Court, which contains 244 flats and three lodges. The development as a whole accordingly contains 327 units.

7. 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.

8. The Applicant holds a long lease of the flat dated 18 October 1985 ("the lease") which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. The Applicant purchased the flat on 30 June 2012.

The issues

9. The issues before us concern the reasonableness of and the liability to pay the service charges arising for the years ending 31 December 2012, 31 December 2013, 31 December 2014 and 31 December 2015. We are also concerned with certain administration charges.

10. We have been shown final service charge accounts for the years ending 31 December 2012 and 31 December 2013. The final service charge accounts for the years ending 31 December 2014 and 31 December 2015 have not yet been prepared and we were shown the estimated service charges for those years.

11. Directions were issued by the tribunal on 14 May 2015 following a case management conference held that day. In paragraph 7 of the decision the following heads of expenditure were identified as being in dispute: (1) management charges; (2) porterage and staff costs; (3) garage and roof renewal (reserve funds); (4) cleaning; (5) health and safety reports; (6) insurance premiums and (7) administration charges. The tribunal dispensed with the need for any separate application in respect of the administration charges.

12. The Applicant was directed to send to the Respondent by 18 June 2015 a schedule in the form attached to the directions setting out by reference to each service charge year the item and amount in dispute, the reason why the amount was disputed and the amount the tenant would pay for that item.

13. From the schedule served by the Applicant (which differs from the issues identified in paragraph 11 above) the service charges we are concerned with fall into four categories, although not every category arises in every year:

    (1) Insurance premiums.

    (2) Caretaker costs.

    (3) Management charges.

    (4) Reserve fund.

14. In addition there are certain administration charges in dispute.

The lease

15. The Respondent is under a duty to provide the various services set out in the Sixth Schedule (paragraph 8 of the Seventh Schedule).

16. The Respondent is under a duty to apply the monies received by way of the service charge to the provision of these services (clause 5(a)).

Insurance

17. Paragraph 13 of the Sixth Schedule requires the Respondent to keep the development (but not the contents of any flat) insured against the usual risks.

18. In particular, paragraph 13 includes the following critical words:

> *...and to have the [Applicant] and the [Respondent] included in the Policy as insured persons ... and forthwith to utilise the proceeds received of any such policy ... to rebuild or reinstate the [development] and the [Applicant] hereby authorises the [Respondent] to receive the insurance monies for this purpose...*

Caretaker costs

19. Paragraph 7 of the Sixth Schedule requires the Respondent to keep such staff to perform such services as it shall think necessary in or about the development. Paragraph 7 of the Seventh Schedule provides that the Respondent will provide flats, without making any charge, for the occupation of resident staff for the benefit of the development. This is on condition that the outgoings of such flats will be recoverable by way of the service charge. These provisions enable the Respondent to employ resident caretakers.

Cleaning costs

20. Paragraph 3 of the Sixth Schedule requires the Respondent to keep the common parts of the development suitably cleaned. This provision enables the Respondent to employ cleaners.

Management charges

21. Paragraph 1 of the Sixth Schedule requires the Respondent to employ and pay a "Chartered Surveyor" to manage the development, collect the ground rents and the service charges and carry out the duties assigned to him by the Respondent or imposed on him by the lease.

22. Clause 1(viii) of the lease defines any reference to "the Surveyor" in the lease as being the Chartered Surveyor employed pursuant to paragraph 1 of the Sixth Schedule.

23. Paragraph 1 of the Sixth Schedule further provides that the Surveyor may (but need not) be a member, director or employee of the Respondent and his remuneration shall not be more than is reasonably commensurate with his services in relation to the development.

Generally

24. The Respondent is under an obligation to keep accounts of the service costs and render service charge statements. There are other obligations but these are the relevant ones.

25. The Applicant pays 0.2948% of the total service charge for the development (Part I of the Fifth Schedule). There is provision for a reserve (paragraph 2(b) of Part III of the Fifth Schedule).

26. The machinery for collecting the service charge is as follows. Each maintenance year runs from 1 January to 31 December. An interim service charge is payable by equal instalments in advance on 1 January and 1 July in each year.

27. The lease contemplates that in each year a final service charge statement will be sent and a balancing exercise carried out so that the appropriate demand can then be made or appropriate credit given. For the sake of completeness, we would record that there is no merit in the Applicant's submission that the terms of the lease require the service charge demands to be certified by a surveyor.

Insurance

28. We have been shown the following insurance policies for the development arranged by Royal and Sun Alliance plc:

Year	Sums Insured	Premium
1 April 2011 – 31 March 2012	£56,401,812.00	£123,161.15
1 April 2012 – 31 March 2013	£58,657,884.00	£113,784.56
1 April 2013 – 31 March 2014	£61,004,199.00	£105,900.50
1 April 2014 – 31 March 2015	£63,452,165.00	£104,976.26

1 April 2015 – 31 March 2016	£65,982,141.00	£103,781.78

29. On each of these policies the name of the insured is the Respondent.

30. The Applicant takes two points relating to insurance. First, she says that she has not been included in the policies as an insured person. Such inclusion she argues is required by the wording of paragraph 13 of the Sixth Schedule to the lease, set out in paragraph 18 above. Secondly, she says that the amount she has to pay for her flat (for example £306.00 for the current year) is unreasonably high.

31. In support of her first point the Applicant relies upon the decision of HH Judge Huskinson in Green v 180 Archway Road Management Co Ltd [2012] UKUT 245 (LC). In that case the lease required the landlord to keep the building insured "in the joint names" of the landlord and the tenant. The landlord argued that the tenant's interest in the building was protected by the "general interest" clause in the insurance policy. This argument was rejected. The learned judge said [15]:

I consider that to place insurance in the name of the lessor, with no mention of the name of the lessee and with the lessee's interest being dealt with merely by the general interest clause, is not the same thing as placing insurance in the joint names of the lessor and lessee.

32. In our case the Respondent has to be "included in the policy as [one of the] insured persons". The lease does not require that the development is insured "in the joint names" of the Applicant and the Respondent.

33. Ms Allaway has exhibited to her witness statement the general interest clause in the policies we are concerned with. This provides that the interests of lessees of the development (such as the Applicant) are noted in the insurance provided subject to their names being disclosed to the insurers by the Respondent in the event of any claim arising.

34. We are therefore satisfied that the Applicant has been "included" in each of the insurance policies "as [one of the] insured persons" within the meaning of the lease. The Green case is distinguishable, as the differently worded lease required the insurance to be taken out in joint names.

35. Although the Applicant has not been successful on this point, we consider it was a point properly and reasonably taken by her.

36. As far as the second point is concerned, we are satisfied from Ms Allaway's witness statement, and also from our own knowledge and

experience of London insurance rates, that the percentage rating per £1,000.00 insured in each of the policies set out above is extremely competitive.

37. The Applicant has not produced any contrasting comparable evidence prior to the hearing. She relies instead on how much she pays for insuring her flat in Brighton, or how much her son pays for insuring his flat in Camden. These comparisons are not, with respect, to the point.

38. In the schedule served by the Applicant, referred to in paragraph 13 above, she challenges the reasonableness of and liability to pay the insurance premiums in each of the four service charge years with which we are concerned. We are satisfied, for the reasons that we have given, that the amount actually incurred by the Respondent in insuring the development in each of those four years was reasonable and the Applicant is contractually liable to pay her appropriate proportion of the amount actually incurred.

Caretaker costs

39. There are two caretakers employed at the development. The senior one, Mr Robinson, is a resident caretaker and has the benefit of a flat at the development provided as part of his remuneration package. The junior one, Mr Walsh, is not a resident caretaker.

40. We were provided at the hearing with details of the caretakers' annual salaries, as follows:

2015

Mr Robinson	£26,560.00
Mr Walsh	£19,565.00
Total	£46,125.00

2014

Mr Robinson	£25,300.00
Mr Walsh	£19,000.00
Total	£44,300.00

2013

Mr Robinson	£24,500.00
Mr Walsh	£18,400.00
Total	£42,900.00

2012

Mr Robinson	£24,000.00
Mr Walsh	£18,000.00
Total	£42,000.00

41. It is unfortunate that the Respondent failed to give the Applicant full details of the caretakers' salaries prior to the hearing, because this has led to a breakdown of trust between the parties and has made the Applicant unduly suspicious of the Respondent and of the service charges.

42. In the schedule served by the Applicant, referred to in paragraph 13 above, she challenges the reasonableness of the caretakers' costs in the service charge years ending 31 December 2012 (£96,072.00) and 31 December 2013 (£98,296.00).

43. In fact the figures used by the Applicant include not just caretakers' wages and the cost of the resident caretaker's flat but costs of contingency relief cover and the wages of the cleaners as well.

44. We are satisfied that the development is of a sufficient size for it to be entirely reasonable for the Respondent to employ a resident and non-resident caretaker, in addition to cleaners. In reaching this conclusion we have taken into consideration the point fairly made by the Applicant that some of the caretakers' duties benefit the Respondent which retains the ownership of about 120 flats in the development. We have also taken into account the fact that there is no longer a communal boiler providing heating to the development. The Applicant relied upon an authority dealing with the reasonableness of employing a resident

porter: Veena SA v Cheong [2003] 1 EGLR 175. However, that case involved a block of seven flats, not 327 units, and we do not find it of relevance or assistance.

45. We are not persuaded by anything said by the Applicant that the work done and services provided by the caretakers are of an inadequate standard. We prefer the evidence of Ms Minhas who is familiar with the development and who gave her evidence in a fair and measured way. We are not satisfied that the photographs of the bin store produced by the Applicant give a fair presentation of the overall appearance of the development.

46. We are also of the view, based on our knowledge and experience of the London market, that the salaries being paid to Mr Robinson (in addition to the value of his accommodation) and to Mr Walsh are reasonable and not excessive in amount. The figures put forward by the Applicant of £10,000.00 (in addition to the value of his accommodation) for Mr Robinson and £15,000.00 for Mr Walsh are, in our judgment, unrealistically low.

Cleaning costs

47. As we have said, the Applicant made no reference to cleaning costs in the schedule served pursuant to the directions order.

48. Nevertheless, for the sake of completeness, we have considered the costs of the four cleaners employed by the Respondent at the development during the relevant years. The three contracts we have been shown provide for a salary of £8,076.00 per cleaner for a 20 hour week.

49. We are satisfied that the development is of a sufficient size for it to be entirely reasonable for the Respondent to employ this number of cleaners (their role being different to that of the caretakers), and we are not persuaded by anything said by the Applicant that the work done and services provided by the cleaners are of an inadequate standard.

50. We are also of the view, based on our knowledge and experience of the London market, that the amount of salary being paid to each of the cleaners is a reasonable and not excessive in amount.

Management charges

51. The Respondent's current managing agent is Rendall & Rittner Ltd. This is a private company limited by shares. According to the 2015 annual return it has seven directors, of which one, the managing director Mr Richard Daver FRICS, is the RICS firm contact officer. In a letter dated 9 September 2015 the RICS Regulation Officer, Mrs

Sharpe, has confirmed that Rendall & Rittner Ltd holds the status of being regulated by RICS. We have also been shown a certificate to that effect issued by RICS with effect for the year commencing 27 January 2015. Rendall & Rittner Ltd does not have corporate membership of RICS as had originally been suggested to us.

52. According to the RICS website, with more than 10,000 firms already successfully registered, RICS Regulation is available on a voluntary basis to qualifying firms, to bring increased confidence and transparency to the real estate market. As it is regulated by RICS, Rendall & Rittner Ltd is entitled to display the "Regulated by RICS" logo on its business stationery, and also has various obligations imposed on it. These include adequate professional indemnity insurance, a complaints handling procedure and a training programme for employees. Individual members of RICS employed by Rendall & Rittner Ltd have to carry out continuing professional development.

53. In 2014 Rendall & Rittner Ltd's stationery shows that as well as Mr Daver, seven Associates employed by the company held individual RICS qualifications (membership).

54. Rendall & Rittner Ltd is engaged as managing agent of the development on the terms of a written agreement dated 25 March 2005. In the agreement Rendall & Rittner Ltd agrees to hold all monies collected from the tenants in accordance with RICS Members' Accounts Regulations and to abide generally by the RICS Code of Residential Management.

55. In the schedule served by the Applicant, referred to in paragraph 13 above, she challenges the reasonableness of and liability to pay the management charges in the service charge years ending 31 December 2012 (£93,000.00) and 31 December 2013 (£96,000.00).

56. The Applicant takes two points relating to management charges. First, she says that Rendall & Rittner Ltd, a company limited by shares, is not a "Chartered Surveyor" as required by paragraph 1 of the Sixth Schedule to the lease. Secondly, she says that the amount of the management charges is unreasonably high.

57. The first point is one of construction of the lease. On 10 June 2015 the Supreme Court handed down its judgment in Arnold v Britton [2015] UKSC 36 which is the most recent decision at the highest level on how a court should construe a written commercial agreement, including a lease.

58. The case concerned the service charge payable by the long lessees of holiday chalets. In respect of one set of leases, the service charge was set at £90.00 in the first year, increasing each year by 10% on a

compound basis. The landlord said this was a fixed charge, not a variable one, and outside the statutory definition of a "service charge" in section 18 of the 1985 Act so there was no statutory control of its reasonableness.

59. The tenants contended that this clause could not be read literally as by 2072 the annual service charge would rise to £1,025,004.00. They submitted that this would be so absurd that the words "up to" should be read into the charge of £90.00 in the first year, increasing each year by 10% on a compound basis. In other words, the figures should be seen as a cap on the actual expenditure not as a fixed charge.

60. We set out the guidance given in paragraphs 14-23 of the majority judgment given by Lord Neuberger:

Interpretation of contractual provisions

14. Over the past 45 years, the House of Lords and Supreme Court have discussed the correct approach to be adopted to the interpretation, or construction, of contracts in a number of cases starting with Prenn v Simmonds [1971] 1 WLR 1381 and culminating in Rainy Sky SA v Kookmin Bank [2011] UKSC 50; [2011] 1 WLR 2900.

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

16. *For present purposes, I think it is important to emphasise seven factors.*

17. *First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in Chartbrook, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.*

18. *Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.*

19. *The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made. Judicial observations such as those of Lord Reid in Wickman Machine Tools Sales Ltd v L Schuler AG [1974] AC 235, 251 and Lord Diplock in Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios) [1985] AC 191, 201, quoted by Lord Carnwath at para 110, have to be read and applied bearing that important point in mind.*

20. *Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a*

court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

21. *The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a contractual provision, to take into account a fact or circumstance known only to one of the parties.*

22. *Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention. An example of such a case is Aberdeen City Council v Stewart Milne Group Ltd [2011] UKSC 56, 2012 SCLR 114, where the court concluded that "any ... approach" other than that which was adopted "would defeat the parties' clear objectives", but the conclusion was based on what the parties "had in mind when they entered into" the contract (see paras 17 and 22).*

23. *Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. Even if (which it is unnecessary to decide) a landlord may have simpler remedies than a tenant to enforce service charge provisions, that is not relevant to the issue of how one interprets the contractual machinery for assessing the tenant's contribution. The origin of the adverb was in a judgment of Rix LJ in McHale v Earl Cadogan [2010] EWCA Civ 14, [2010] 1 EGLR 51, para 17. What he was saying, quite correctly, was that the court should not "bring within the general words of a service charge clause anything which does not clearly belong there". However, that does not help resolve*

the sort of issue of interpretation raised in this case.

61. In Arnold the court preferred the literal construction put forward by the landlord despite the absurdly high service charge it would produce by 2072. In the 1970's, when the clauses were drafted, inflation was running at well over 10% per annum, and it is understandable that the parties would chose the certainty of a fixed charge albeit with risks on both sides. Many commentators have regarded this decision as marking a return to a preference for a literal construction and a warning against using "commercial common sense" to rescue a party from an unwise bargain.

62. We have borne the principles set out by Lord Neuberger carefully in mind. We have not found this an easy question and both side's arguments command respect. On balance, we prefer the arguments put forward by the Respondent. The development consists of 327 units in several blocks surrounded by estate roads. The burden imposed on the managing agent running such a development is immense. At present the total service charge budget exceeds £750,000, and it would have been a substantial figure in 1985 when the lease was executed. A reasonable person having all the background knowledge which would have been available to the parties when the lease was executed would have understood them to be using the phrase a "Chartered Surveyor" to mean not just (or even) a single individual but to include a body of persons functioning with the professional skill, and subject to the professional obligations, required by RICS.

63. From the information available to us, summarised in paragraphs 51-54 above, we are satisfied that Rendall & Rittner Ltd is a body of persons functioning with the professional skill, and subject to the professional obligations, required by RICS. Accordingly, the Respondent is entitled to recover the reasonable costs of Rendall & Rittner Ltd through the service charge.

64. We now turn to the amount of the management charge. In the service charge year ending 31 December 2012 this amounted to £93,000.00 or £284.40 per each of the 327 units. In the service charge year ending 31 December 2013 this amounted to £96,000.00 or £293.58 per each of the 327 units.

65. We consider these charges to be on the high side, and that they should be reduced in each of these years by 15%, that is to say to £79,050.00 and £81,600.00 respectively and we would suggest that a similar approach is taken to the charges in the following years, albeit they are not listed in the applicant's schedule.

Reserve Fund

66. As we have said, there is provision for a reserve (paragraph 2(b) of Part III of the Fifth Schedule). The reserve is to cater for items of expenditure which are likely to arise only once during the remainder of the term of the lease or at intervals of more than one year. The reserve is to ensure that, so far as is reasonably foreseeable, the service charges do not unduly fluctuate from year to year.

67. In the schedule served by the Applicant, referred to in paragraph 13 above, she challenges the reasonableness of the provision for a reserve in the service charge estimate for the service charge year ending 31 December 2015 (£200,000.00).

68. We were told that this was a contribution towards the cost of resurfacing the pathways and roadways on the development which would total £456,000. The reasonableness of this expenditure has been confirmed by the tribunal. We are satisfied that this is a legitimate use of the reserve fund and that the Applicant is liable to pay her appropriate proportion of the £200,000.00.

Administration charges

69. In the schedule served by the Applicant, referred to in paragraph 13 above, she challenges the following charges made to her personally by the Respondent:

	Date	Description	Amount
(a)	12 February 2013	Rendall & Rittner Ltd's fee for instructing solicitors regarding balance overdue.	£72.00
(b)	12 September 2013	Gordon Dadds' fee regarding balance overdue.	£303.00
(c)	17 March 2014	Rendall & Rittner Ltd's fee for instructing solicitors regarding balance overdue.	£96.00
(d)	17 April 2014	Gordon Dadds' fee regarding balance overdue.	£93.00
(e)	10 February 2015	Rendall & Rittner Ltd's fee for instructing solicitors regarding balance overdue.	£96.00
(f)	11 February 2015	Gordon Dadds' fee regarding balance overdue.	£420.00

(g)	1 June 2015	Recharge of investigation works by Sandhurst Construction Ltd regarding water leak.	£157.80
(h)		Charge by a private plumber due to gas pipes around the fireplaces being wrongly connected.	£220.00

70. We have already explained that the Respondent is under a duty to provide the various services set out in the Sixth Schedule to the lease and is under a duty to apply the monies received by way of the service charge to the provision of these services. Paragraph 9 of the Sixth Schedule requires the Respondent to pay all legal (our emphasis) costs incurred by it in (1) the running and management of the development, (2) in the enforcement of the obligations contained in the leases granted of the flats in the development and (3) taking steps it reasonably considers necessary in respect of statutory or other official notices served on any tenant of a flat.

71. This provision entitles (indeed requires) the Respondent to pay the legal costs of chasing up arrears of ground rent and service charges from individual tenants such as the Applicant and to recover those legal costs through the service charge (subject to any application under section 20C of the 1985 Act). In our judgment this provision does not entitle the Respondent to recover any legal costs directly from the Applicant herself.

72. By clause 3 of the lease the Applicant covenanted to observe and perform the obligations set out in the Fourth Schedule.

73. By paragraph 12 of the Fourth Schedule the Applicant covenanted to carry out repairs to the flat in respect of which she was given written notice within three months and, if the Applicant was in default of her repairing obligations, the Respondent would be entitled to enter the flat to carry out the repairs and the Applicant would be liable in debt to pay the costs of the repairs to the Respondent on demand.

74. By paragraph 14 of the Fourth Schedule the Applicant covenanted:

To pay to the Lessor on demand all costs charges and expenses (including legal costs and Surveyor's fees) which may be incurred by the Lessor or which may become payable by the Lessor in respect of the preparation and/or service of a Schedule of Dilapidations or under or in contemplation of any proceedings in respect of the Flat under section 146 or 147 of the Law of Property Act 1925 or in the preparation and/or service of any notice thereunder respectively

notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

75. Such costs referred to in paragraphs 73 and 74 above are variable administration charges within the meaning of paragraphs 1(1) and 1(3) of schedule 11 to the 2002 Act (Christoforou v Standard Apartments Ltd [2014] L&TR 12). By paragraph 2 of schedule 11 a variable administration charge is payable only to the extent that the charge is reasonable.

76. As far as the first six charges set out in paragraph 69 above are concerned, the logically prior question is whether the Respondent is entitled to claim directly from the Applicant some or all of those charges by virtue of paragraph 14 of the Fourth Schedule, set out in paragraph 74 above.

77. Useful guidance has been given to tribunals in construing a clause such as this by the decision of Mr Martin Rodger QC in Barrett v Robinson [2015] L&TR 1. It is worth quoting the final three paragraphs of this decision:

> 51. *For costs to be recoverable under [such a clause] a landlord must show that they were incurred in or in contemplation of proceedings, or the preparation of a notice, under section 146. Sometimes it will be obvious that such expense has been incurred, as when proceedings claiming the forfeiture of a lease are commenced, or a notice under section 146 is served. In other circumstances it will be less obvious. The statutory protection afforded by section 81 of the 1996 Act requires that an application be made to the first-tier tribunal for a determination of the amount of arrears of a service charge or administration charges which are payable before a section 146 notice may be served, but proceedings before the First-tier Tribunal for the determination of the amount of a service or administration charge need not be a prelude to forfeiture proceedings at all. The First-tier Tribunal's jurisdiction under section 27A of the 1985 Act covers the same territory, and proceedings are often commenced in the County Court for the recovery of service charges without a claim for forfeiture being included. A landlord may or may not commence proceedings before the first-tier tribunal with a view to forfeiture; a landlord may simply wish to receive payment of the sum due, without any desire to terminate the tenant's lease, or may not have thought far enough ahead to have reached the stage of considering what steps to take if the tenant fails to pay after a tribunal determination has been obtained.*
>
> 52. *Costs will only be incurred in contemplation of proceedings, or the service of a notice under section 146 if, at the time the*

expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not in fact contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on [such as clause] as providing a contractual right to recover its costs.

53. *In this case there is no evidence whatsoever that the respondent contemplated proceedings for the forfeiture of the appellant's lease or the service of a notice under section 146 as a preliminary to such proceedings. The first LVT proceedings were commenced by the appellant under section 27A of the 1985 Act for a determination of the extent of her liability to pay the insurance rent. Nothing in the respondent's own statement submitted to the first LVT suggested that she had any intention of forfeiting the lease, none of the correspondence from her solicitors suggested that that such a course of action was in her mind, even before it was discovered that the appellant was entitled to a net credit for overpayments in previous years, and there was no mention of forfeiture, or of section 81 of the 1996 Act, in the skeleton argument prepared by her counsel. As a matter of fact, therefore, there was no justification for the second LVT's assumption that costs of £6,250 had been incurred in or in contemplation of proceedings, or the preparation of a notice, under section 146.*

78. On 5 February 2013, Davenport Lyons (the Respondent's then solicitors) wrote to the Applicant in respect of arrears of service charges threatening to issue court proceedings. The letter asserted:

As these arrears entitle our client to consider forfeiture proceedings pursuant to the provisions of Section 146 of the Law of Property Act 1925, our client is entitled to recover their legal costs from you which, to date, amount to £93.00 (inclusive of VAT).

79. However, there is a world of difference between asserting an entitlement and actually contemplating the commencement of forfeiture proceedings. These proceedings were commenced by the Applicant and not by the Respondent. We have read with care the correspondence sent to the Applicant by the Respondent's solicitors and Rendall & Rittner Ltd, paragraph 31 of the Respondent's statement of case dated 9 July 2015 and paragraphs 22-24 of Ms Minhas' witness statement dated 5 August 2015.

80. The correspondence between the Applicant, on the one hand, and the Respondent's solicitors and Rendall & Rittner Ltd, on the other hand, was generated because, in the words of Ms Minhas: *a challenging leaseholder was making a point of questioning numerous aspects of the lease, and in particular, Rendall & Rittner Ltd's position as*

managing agents. We are not persuaded forfeiture proceedings were ever contemplated by the Respondent.

81. For these reasons we find that the Applicant has no liability to pay the first six charges set out in paragraph 69 directly to the Respondent.

82. As far as the last two charges set out in paragraph 69 above are concerned, the logically prior question is whether the Respondent is entitled to claim directly from the Applicant either of those charges by virtue of paragraph 12 of the Fourth Schedule, set out in paragraph 73 above.

83. According to the invoice to the Respondent from Sandhurst Construction Ltd dated 29 April 2014, the charge for £157.80 was for attending the flat on 5 April 2015 to investigate a reported water leak from the flat into flat 40. No works were carried out. This charge therefore falls outside paragraph 12 of the Fourth Schedule referred to in paragraph 73 as no repairs were carried out.

84. The parties have provided us with scant information about the charge for £220.00. The Applicant refers to it at the foot of page 11 of her statement of case dated 18 June 2015. If this was actual work carried out by the Respondent because of a failure by the Applicant to comply with the repairing obligation, then it would be recoverable directly from her under paragraph 12 of the Fourth Schedule.

Section 20C application

85. In the light of our findings we do not consider there are grounds for making an order under section 20C of the 1985 Act.

Respondent's costs application

86. The Applicant had success on the administration charges and on the amount of the management charges. The Applicant's arguments on the recoverability of the insurance premiums and management charges were, in the main, respectable albeit unsuccessful. The Applicant's arguments on the caretakers' costs and reserve fund were weak. Looking at it in the round we are not persuaded, on balance, that the Applicant has acted unreasonably in bringing or conducting these proceedings within the meaning of rule 13(4) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. We will not therefore make an award of costs against her.

Name: Simon Brilliant **Date:** 31 December 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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 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.