12979

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HN/LSC/2018/0046
Property	:	Flat D, Chatfield Court, 10 Boscombe Spa Road, Bournemouth BH5 1BD
Applicant	:	Mr R.P. Mortimer
Representative	:	Foxes Property Management
Respondent	:	Mr S.M.Frend
Representative	:	
Type of Application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Member(s)	:	Judge Tildesley OBE Mrs Johanne Coupe FRICS
Date and Venue of Hearing	:	Poole Law Courts, Civic Centre, Poole, Dorset BH15 2NS 6 August 2018
Date of Decision	:	3 September 2018

DECISION

Decisions of the Tribunal

1. The Tribunal finds that the windows in the Property are part of the demise owned by the Tenant.

2. The Tribunal is satisfied that the Tenant is obliged to keep the windows of the Property in good tenantable repair and condition.

The Application

3. The Applicant is Mr Richard Paul Mortimer who is the owner of the freehold property known as Chatfield Court. Mr Mortimer granted a lease of Flat D, Chatfield Court, 10 Boscombe Spa Road, Bournemouth for a term of 125 years from 25 July 2016 to Mr Simon Frend in return for a premium and a ground rent of £35 per annum.

4. Mr Mortimer and Mr Frend are referred in this decision as the Landlord and the Tenant respectively. Flat D, Chatfield Court is the Property. The lease dated 25 July 2016 is referred to as The Lease.

5. The Landlord has brought an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine who is liable to repair and maintain and replace the windows at the property.

6. The Landlord states that the bay windows at the front of the property are in disrepair such that the Landlord cannot comply with his obligation to decorate the exterior of the property. The Landlord asserts that the windows form part of the demised premises and accordingly the repair of the same is the Tenant's responsibility.

7. The Tenant takes a contrary view. The Tenant maintains that only internal walls, internal doors and internal windows form part of the demise, and that accordingly external windows are part of the external structure and fall within the Landlord's obligation to maintain, repair, decorate and renew the main structure of the building.

8. The Tenant also relies on the Lands Tribunal decision in *Sheffield City Council v Oliver* [2008] LRX/146/2007 *unreported* in which it was held that the freeholder was required to maintain and replace the windows despite the lease including windows in the demise.

9. The issue for the Tribunal is a narrow one which depends upon the correct construction of the lease. The Tenant in his response raised concerns about the quality of the works to the exterior of

the property, the standard of services provided by the managing agent, and historic neglect. The Tenant's concerns are not relevant to the question for determination posed by the Landlord's application. The Tenant is entitled to make application to the Tribunal to deal with those concerns but he may wish to take advice before embarking on further litigation.

10. On 29 May 2018 the Tribunal issued directions to progress the application. The Tenant requested a hearing, and asked for the other leaseholders to be joined in the application. The Tenant pointed out that it was part of the Landlord's case that the other leaseholders had replaced the original windows with Upvc ones. The Tribunal decided it would not be proportionate to invite the other leaseholders to join the application because the issue was one of the law. Further the fact that there may be other persons who supported the Tenant's interpretation of the lease would not add to the quality of the Tenant's case.

11. The hearing was held on 6 August 2018 at Poole Law Courts. Mr Peter Heasman, Managing Director of Foxes Property Management, represented the Landlord at the hearing. The Tenant appeared in person. The Landlord supplied the hearing bundle. References to documents in the hearing bundle are in [ ]. Immediately prior to the hearing the Tribunal inspected the Property and Chatfield Court in the presence of Mr Heasman and the Tenant.

The Property

12. Chatfield Court is a three storey development situated in an established residential area close to holiday accommodation, shops and Bournemouth town centre.

13. The development is believed to have been built during the 1920's as purpose built flats. The property comprises of six self-contained flats sharing communal entrances to the front and rear.

14. The building is of brick and block cavity rendered elevations under a predominantly pitched and slate roof. An area of flat roof runs from front to rear through the middle section of the roof. Chimney stacks are rendered. The upper floors benefit from private balconies.

15. The members of the Tribunal were advised that the gardens to the front of the building are demised to each ground floor flat. Off road parking and garages were found to the rear.

16. The Tribunal's attention was drawn to several alleged outstanding repair and maintenance issues and also to work recently completed including the renewed flat roof covering, replacement

or overfitting of uPVC fascia's and soffits, replacement rainwater goods and external redecoration.

17. The Tribunal saw that replacement Upvc windows had been installed in a number of flats other than the Property. The Tenant also pointed out that the cills of the front windows in some flats had been capped with Upvc.

18. The Tribunal was invited to inspect the Property, which was a first floor flat accessed off the communal hallway and stairs. The accommodation was noted to be spacious and includes a living room, kitchen, small utility, two bedrooms, study and bathroom.

19. A newly installed fire door at the entrance of the Property was brought to the Tribunal's attention. Mr Heasman advised the Tribunal that the doors had been installed in the communal areas for all the flats in the building as a result of a recent fire and safety inspection. There was another substantial door behind the fire door which the Tribunal understood to be the original front door of the Property.

20. At the rear of the Property the kitchen door opened into an enclosed landing having a cupboard which once operated as a coal bunker. The landing had another door similar to the original front door which opened out to stairs leading back into the communal hallway. The Tribunal understood that the landing would have been open when the building was originally constructed.

21. The Tenant invited the Tribunal to inspect the windows at the Property. The timber frame windows to the study and the rear bedroom had been replaced with Upvc windows. The two bay windows at the front, and the windows to the bathroom, toilet, kitchen and utility were of single glazed timber frame construction. The Tenant pointed out various aspects of the condition of the various windows. The Tenant had carried out his own survey of the timber frame windows which was included at [162-164]. The Tenant believed that the majority of the window frames required preparation, filling and repainting rather than repair and or replacement. The Tribunal could not ascertain when the windows were last redecorated. The Tribunal saw no internal windows in the Property.

22. The Tribunal also viewed the balcony and was shown examples of substantial rot in the upper beam and in the cill/handrail.

The Lease

23. Mr Heasman informed the Tribunal that Mr Mortimer and his family had owned the building for a long time. According to Mr Heasman, Mr Mortimer had retained ownership of some of the flats for short term lets but now all the flats were on long

leaseholds except for Flat C. The Property was in the ownership of Mr Mortimer until he granted a long leasehold to the Tenant in 2016.

24. The relevant parts of the Lease to this dispute are set out in the paragraphs below.

25. Clause 1 of the Lease described the demise as

> "All that the Flat known as Flat D being on the first floor of the Building including the floors and the joists to which the floors are attached and ceilings but not the joists to which are attached and the internal walls doors and windows between the same levels of the Flat the situation whereof is shown on the plan B annexed hereto and thereon edged in red TOGETHER ALSO WITH the garage number 11 and edged blue on the said plan "A" (all which premises are hereinafter collectively called "the Flat") AND TOGETHER ALSO WITH the easements rights and privileges mentioned in the Second Schedule hereto subject as therein mentioned EXCEPT AND RESERVING as mentioned in the Third Schedule".

26. Under Clause 4 the Lessee covenants with the Lessor and with the owners and lessees of the other flats comprised in the Building that the lessee will at all times hereafter:

> "(1) Keep the flat (other than the parts comprised and referred to in paragraphs (3) and (4) of Clause 5 hereof) and all walls party walls sewers drains pipes cables wires and appurtenances thereto belonging in good tenantable repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the parts of the Building other than the Flat".
> "(2) Contribute and pay one sixth of the costs expenses outgoings and matters mentioned in Fourth Schedule hereto ....."

27. Under Clause 5 the lessor hereby covenants with the Lessee as follows:

> "(3) That (subject to contribution and payment as hereinbefore provided) the lessor will maintain repair decorate and renew (a) the main structure and in particular the roof foundations exterior walls chimney stacks gutters and rainwater pipes of the Building and the water tanks (b) the gas and water pipes drains and electric cables and wires in under and upon the Building and enjoyed or used by the lessee in common with the owners and lessees of the other flats (c) the boundary walls and fences of the Building in so far as the lessee or lessees of any other flat in the Building is not responsible therefor (d) the block of garages shown on the said plan "A" of which the garage hereby demised forms part (e) the main entrances passages landing and staircases of the building as enjoyed or

> used by the lessee in common as aforesaid and (f) the front garden path driveway and garage forecourt of the building.
> (4) That (subject as aforesaid) the Lessor will so far as practicable keep clean and reasonably lighted the passages landings staircases and other parts of the Building so enjoyed or used by the lessee in common as aforesaid.
> (5) That (subject as aforesaid) the lessor will so far as reasonably required decorate the exterior of the building".

28. The First Schedule set out the restrictions imposed on the flat which the lessee covenanted with the lessor and the owners and lessees of the other flats under clause 2 to observe at all times. Restriction 6 required the lessee to clean the interior and exterior of the windows of the flat at least once a month.

29. The Fourth Schedule identified the costs expenses outgoings in respect of which the lessee is required to contribute by way of service charge. Under paragraphs 1 (a-f), 2 and 3 the lessee is required to contribute to the costs of the works that the landlord has covenanted to do under sub-clauses 5(3), 5(4) and 5(5).

Consideration

30. The Tribunal is required to decide two questions of construction:

a) Whether the windows are part of the demised premises?
b) Who is responsible for the repair, maintenance and renewal of the windows?

31. The Tenant correctly points out that question b) is not necessarily dependent upon the answer to a). The Tenant relies on *Sheffield City Council v Oliver* for the proposition that the landlord's repairing covenant can extend to "demised premises".

32. Lord Neuberger in *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619 at paragraph 15 sets out the approach that courts and tribunals should follow when interpreting a lease:

> "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] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words ... 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.

33. The definition of the demised premises is found at clause 1. The Property is identified as Flat D on the first floor of the building. The Property includes the floors and the joists and the ceiling but not the joists which presumably belongs to the flat above. The internal walls are part of the Property but not the external walls.

34. The Tenant argues that the word "internal" that precede walls equally applies to doors and windows, which means that only internal doors and internal windows are included in the demised premises. The Landlord disagrees stating that the word "internal" is restricted to the walls, and that the demised premises include all windows and doors within the area edged red on Plan B.

35. The Tribunal on balance prefers the construction favoured by the Landlord. The Tribunal acknowledges that if viewed grammatically the adjective "internal" could apply to doors and windows as well as walls. The Tribunal is, however, concerned with what the parties intended when they agreed the lease and not with the grammatical construction of the words used. The Tribunal is satisfied that the parties intended for the adjective "internal" to be restricted to walls for the following reasons:

a) The Lease draws an explicit distinction between internal and external walls. The lease refers to internal walls in the definition of demised premises in clause 1, and refers to external walls when specifying the extent of the lessor's repairing covenant under clause 5(3)(a) and the lessee's liability to contribute towards the lessor's costs under The Fourth Schedule.

b) "Doors" are mentioned once in the Lease which is in clause 1 (the parcels) describing the extent of the demised premises. The Lease does not include the word "doors" in the landlord's repairing covenant. There is no reference in the Lease to "external" doors.

c) The Property has two external doors which open into the communal landing and stairway as well as internal doors. The two external doors are within the area edged red on Plan B which defines the boundaries of the demised premises. Although it would appear that Plan B identifies the original front door of the Property, and not the new fire door installed in the communal area.

d) The word "windows" is found twice in the lease. Windows are included in clause 1 as part of the demised premises. Windows are also referred to in The First Schedule which places an obligation on the Tenant to clean the interior and exterior of windows at least once a month. As with "doors", "windows" are

not named in the landlord's repairing covenant at clause 5, and there is no reference in the lease to "external windows".

36. The Tribunal is satisfied from the above analysis of clause 1 and other relevant clauses of the lease that the parties intended for the doors and windows of the Property to be included within the demise, and that the demise was not restricted to internal doors and internal windows.

37. The Tribunal's conclusion is fortified by its evaluation of the other factors identified in *Arnold v Britton*. When the lease comprises part only of a building the principal purpose of parcels (clause 1) is to define the extent of the premises to be let in order to identify the respective repairing liabilities of the landlord and tenant. If this is not done, a high undesirable position could arise where neither party to the lease is legally obliged to carry out essential repairs and there is a vacuum left in the repairing obligations under the lease. This would be a particular danger when the demised premises form part of a larger building and the lease fails to deal precisely with the boundaries in 'shared' walls, floors and ceilings and in exterior walls. The Tribunal considers this danger was recognised in the drafting of the Lease because it specified the floors, ceilings joists and walls that belonged to the demise. Given the degree of attention paid to these elements the Tribunal considers that the Lease would have made the position clear in the parcels and the Landlord's repairing covenant if the parties had intended for the Tenant to have been responsible for the repair of internal doors and internal windows, and the Landlord responsible for the external doors and external windows of the Property.

38. The Tribunal turns now to the facts and circumstances known or assumed by the parties at the time that the Lease was executed. The Lease was executed in 2016 when the Property was purchased by the Tenant. The Tribunal understands that at the time of purchase the Property had no internal windows. That being so there would be no point for the inclusion of the word "windows" in clause 1 if the Landlord had been responsible for their repair and maintenance of them.

39. The Tribunal's conclusion that the windows are part of the demise and prima facie within the Tenant's repairing obligation does not offend commercial good sense. It is not uncommon for leases to make tenants responsible for the repair and maintenance of windows of the demised premises. In contrast a lease is unlikely to include an obligation for a tenant to be responsible for the entirety of the walls which is why a distinction is made in many leases between internal and external walls.

40. The Tribunal adds that the Tenant's grammatical interpretation of the phrase "internal walls doors and windows" depends upon

"internal" applying to doors because "doors" precede "windows" in the order set out in the phrase. The Tribunal finds that Plan B identifies internal and external doors within the Property, which questions whether the adjective "internal" is a descriptor of "windows" if it is not an adjective of "doors".

41. Finally the Tribunal notes that the Tenant is obliged under The First Schedule to clean the interior and exterior of the windows, which suggests that the windows are the Tenant's responsibility.

42. The Tribunal finds that the windows in the Property are part of the demise owned by the Tenant.

43. The next question is who is responsible for the repair and maintenance of the windows. Clause 4(1) places the obligation upon the Tenant to keep The Flat (the demised premises) in good tenantable repair and condition. The Tribunal has decided that The Flat includes the windows.

44. Clause 4(1), however, introduces a qualification to the Tenant's obligation to keep the Flat in good tenantable repair and condition by excluding from the Flat (the demised premises) the parts comprised and referred to in paragraphs (3) and (4) of clause 5. Clauses 5(3) and 5(4) deal with the Landlord's covenant to repair and maintain the Building and the Landlord's covenant to keep clean and reasonably lighted the communal areas. There are two potential areas arising from these clauses which might limit the Tenant's repairing obligation in respect of the demised premises. They are the garage (clause 5(3)(d)) and the main structure (clause 5(3)(a)).

45. Under clause 1 the demised premises includes the Flat and the garage numbered 11. Under clause 5(3)(d) the Landlord is required to maintain repair decorate and renew the block of garages shown on the said plan "A" of which the garage hereby demised forms part. In the Tribunal's view, the wording of clause 5(3)(d) has the effect of excluding the garage from the Tenant's repairing obligation and places it firmly within the Landlord's repairing obligation.

46. The Tenant argued that the same exclusion from the Tenant's repairing responsibility applied to the windows despite the fact that windows were part of the demised premises. The Tenant contended that the term "main structure" in clause 5(3)(a) incorporated the windows of the Property even though windows were not given as an example of the "main structure".

47. The Tenant relied on the principle established by the Lands Tribunal in *Sheffield City Council v Oliver* [2008] LRX/146/2007 *unreported* which was approved in the Upper Tribunal decision of *Miss C Waaler v The London Borough of Hounslow* [2015] UKUT

0017 (LC). *Oliver* established the principle in respect of a local authority flat subject to the right to buy that the cost of works to Mrs Oliver's windows was recoverable as service charges notwithstanding that the windows were reserved as part of the demise of the flat because windows were part of the "structure and exterior" of the building.

48. The facts were that Ms Oliver was the tenant of a maisonette, 128 Cliff Street, Sheffield, under a lease for 125 years from 25 September 1989 which was acquired by Ms Oliver and her late mother under the right to buy provisions of the Housing Act 1985. Ms Oliver challenged the Council's decision to recover the costs of the installation of double glazed windows on the ground that she was responsible under the terms of the lease for the installation of windows.

49. Sheffield City Council argued that it had the obligation to install windows at the property under the provisions of the lease and also by reason of the covenants implied in the lease under the Housing Act 1985. It was accepted that the demised premises included the external windows, their frames and glass. The lessee's repairing covenant under the lease required her to keep the demised premises including windows in repair except those parts of the demised premises which the Council was liable to keep in repair by virtue of the covenant implied by paragraph 14(2)(a) of Schedule 6 to the 1985 Act. The Council's express repairing covenant under the lease effectively replicated the words of the implied covenant namely that the Council was responsible to keep in repair the structure and exterior of the demised premises. The issue in the case turned on whether the windows were part of the structure and exterior of the demised premises and if they were whether the implied covenant took precedence over the express words of the lessee's repairing covenant.

50. The Lands Tribunal relied on the decision of Mr Thayne Forbes QC sitting as a Deputy Judge of the Queen's Bench Division in *Irvine v Morgan* [1991] 1 EGLR 261 for concluding that windows were part of the structure and exterior of the demised property. The Lands Tribunal cited the Judge's decision at 262 F-G and 262M-236B:

> "I have come to the view that the structure of the dwelling-house consists of those elements of the overall dwelling-house which give it its essential appearances, stability and shape. The expression does not extend to the many and various ways in which the dwelling-house will be fitted out, equipped, decorated and generally made to be habitable.
>
> I am not persuaded ... that one should limit the expression 'the structure of the dwelling-house' to those aspects of the dwelling-house which are load-bearing in the sense that that

sort of expression is used by professional consulting engineers and the like; but what I do feel is, as regards the words 'structure of the dwelling-house', that in order to be part of the structure of the dwelling-house a particular element must be a material or significant element in the overall construction. To some extent, in every case there will be a degree of fact to be gone into to decide whether something is or is not part of the structure of the dwelling-house."

"Windows pose a slightly different problem. I have some hesitation about this, but bearing in mind that one is talking about a dwelling-house, and rejecting as I do the suggestion that one should use 'load-bearing' as the only touchstone to determining what is the structure of the dwelling-house in its essential material elements, I have come to the conclusion that windows do form part of the structure of the dwelling- house"

51. The Lands Tribunal decided that

"In principle, therefore, in my judgment, for the purposes of paragraph 14(2)(a) external windows will constitute both part of the structure and part of the exterior of the building or the dwelling-house to which they belong. It would be wrong to say that they will do so in every case, since facts are infinitely variable, but there is nothing to suggest that the metal-framed windows in the present case are exceptional.

23 Under paragraph 14(2)(a), therefore, the council is required to keep the external windows in repair, and thus the cost of fulfilling this obligation is attributable to the service charge. The council, however, have not, so far as I am aware, sought to justify the proposed works as works of repair only. Their notice of intention to carry out the works referred to their responsibility "for repairs and improvements to the structure and exterior" of the maisonette, and the reasons for carrying out the works appear to imply that they would be improvements. It is not sufficient for the council, therefore, to rely on the implied covenant. They need to rely on the covenant at clause 4(3) of the lease, which, somewhat surprisingly it seems to me, enables them (indeed requires them), whether the lessee likes it or not, to undertake works of improvement that they consider desirable to a maisonette held under a 125-year lease and then charge the cost of the works to the lessee.

24 As far as clause 4(3) is concerned, I see no reason to reach any different conclusion on whether the external windows are part of the structure and extension of the demised premises and the building. The LVT thought that the windows and frames were excluded from the definition of "the Building" because they were not expressly mentioned in it, but I can see no reason why this should be so. That the habendum includes the external windows and doors within the demise, excepts the parts of the structure and exterior which the council are obliged to repair under paragraph 14(2)(a) and then for avoidance of doubt excludes the external windows and doors

> from this exception has no bearing, in my view, on the construction to be placed on clause 4(3). There is no reason why some limitation on the scope of the repairing covenant should be derived from the demise. But in any event the wording of the habendum does not suggest that the parties proceeded on the basis that external windows were not part of "the structure and exterior" within the meaning of those words in paragraph 14(2)(a)".

52. The Tribunal highlights three features of the decision in *Oliver*. First, the Lands Tribunal decided that although the demised premises included the external windows, their frames and the glass, the premises was subject to para.14(2) of Pt III of Sch.6 to the 1985 Act. This obliged the landlord of right to buy flats to keep in repair the structure and exterior of the demised premises. In the case before this Tribunal the provisions of the 1985 Act does not apply and there was no implied repairing covenant on the part of the Landlord.

53. Second, although the Lands Tribunal had no difficulty in finding that the windows were part of the structure and exterior of a dwelling house the Lands Tribunal observed that such an interpretation of structure and exterior was not inevitable in every case, "since facts are infinitely variable".

54. Third the Lands Tribunal accepted in [24] that the task ultimately is to decide the parties' intentions from the words used in the lease and surrounding circumstances.

55. Although the Tribunal considers *"Oliver"* helpful in clarifying the meaning of "structure and exterior" and in establishing that the landlord's repairing covenant can extend to demised premises, it does not set a binding precedent and confirms the principle that in any one case the intentions of the parties are to be ascertained from the meaning of the particular words used in the specific lease and the surrounding circumstances.

56. In this case the Tribunal is satisfied that windows are part of the Flat (demised premises) and that the Tenant is obliged to keep the windows in good tenantable repair and condition unless windows fall within the landlord's repairing covenant.

57. The only part of the landlord's covenant that is relevant is clause 5(3)(a) which requires the landlord to repair *"the main structure and in particular the roof, foundations, exterior walls chimney stacks gutters and rainwater pipes of the Building and the water tanks"*.

58. The Tribunal observes clause 5(3)(a) refers to "the main structure" which carries a different meaning to the words "structure and exterior" which applied to the lease in "Oliver". An

obligation extending to the "main structure" would usually be more restrictive than one simply relating to the "structure". The Tribunal finds that the word "main" refers to the principal parts of the Building that benefit the Building as a whole rather than the needs of a particular Flat. The examples given in clause 5(3)(a) of the parts of the Building which form the main structure fit this description. Although windows are part of the structure of the building, the Tribunal is satisfied that they do not fall within the definition of "main" structure. Windows unlike the examples given in clause 5(3)(a) primarily serve the needs of a particular flat.

59. The Tribunal places weight on the fact "windows" are not mentioned in clauses 5(3) and 5(4) which places limits on the Tenant's repairing covenant. The Tribunal considers that if the parties had intended windows to fall within the Landlord's repairing covenant they would have specifically referred to windows in clause 5(3) and 5(4) to counter the explicit reference in clause 1 defining the extent of the demised premises.

60. The Tribunal finds that windows do not fall within the remit of the landlord's covenant to repair and maintain under clause 5(3). The Tribunal is satisfied that the Tenant is obliged to keep the windows of the Property in good tenantable repair and condition.

61. The Tribunal records that in a letter dated 24 July 2018 from Foxes Property Management that the Landlord accepts responsibility for decorating the exterior surfaces of the windows provided they are in sound condition subject to the Tenant's obligation to make contribution to the cost of the works.

62. The Tribunal records Mr Heasman's concessions made on behalf of the Landlord at the hearing that the balcony falls within the Landlord's repairing covenant, and that the new fire doors for each Flat are in the common areas and are the responsibility of the Landlord.

63. The Tenant applied for his costs of the Tribunal hearing and to be indemnified against any of the Landlord's costs.

64. The Tribunal has no power to order one party to pay the other party's costs unless a party has acted unreasonably in the conduct of the proceedings. The Tribunal is satisfied that both parties acted reasonably.

65. The Landlord has made no application for the Tenant to pay the application fee and hearing fee totally £300.

66. The Landlord may have the right under the lease to recover his costs in connection with the proceedings through the service charge. If he does so, the Applicant can submit a section 20C application asking the Tribunal to make an order preventing the Landlord from doing this.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

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 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.

(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 that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.