FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/21UD/LSC/2020/0061** **V:CVPREMOTE**
Property	**:**	**Flats at Southview Court, Old London Road Hastings East Sussex TN35 5BN**
Applicant	**:**	**William Copp and Others as listed on the Application**
Representative	**:**	**Mr G Okines of Arko Property Management Ltd**
Respondent	**:**	**SE Estates and Agency Management Ltd**
Representative	**:**	**Ms K Richmond of Counsel**
Type of Application	**:**	**S27A and s20C Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Regional Surveyor D Banfield FRICS**
Date and venue of Hearing	**:**	**Remote CVP hearing** **22 February 2021**
Date of Decision	**:**	**19 March 2021**

DECISION AND ORDER

1 The Tribunal determines that the amount payable by the tenants in respect of the service charge year 2015-6 is £46,484.79; for the service charge year 2016-17 is £27,129.64; for the service charge year 2017-18 the sum of £38,297.69, and for the service charge year 2018-19, the sum of £46,573.45. These totals are payable by the Applicants in the proportions as set out in their respective leases.

2 The Tribunal determines that the Respondent is not entitled to require the Applicants to pay any administration charge which exceeds 10% of the service charge for the relevant year because the terms of the leases do not permit such charges to be levied. For the years in question in this application the total amounts payable by the Applicants in respect of administration charges are as follows:
2015-6 £4,225,89#
2016-7 £2,466.33
2017-8 £3,481.61
2018-9 £4,233.95.
These sums are set out here for convenience but have been included in the totals given in paragraph 1 above and are not additional to those sums.

3 In so far as the Applicants have not already paid these sums they will not be due and payable until the Respondent landlord has complied with s21 Landlord and Tenant Act 1985 by responding properly to the tenant's requests for information and with s20B in relation to sending demands timeously .

4 The Tribunal makes an unlimited order under s20C Landlord and Tenant Act 1985 in favour of Mr W Copp, Mr D Dixon, Mr A Floyd, Mr & Mrs N Pelaou, Ms P Hodd, Ms B Wilder, Mr A Lawson, Mr K Tilman and Mr & Mrs T Lee .

5 The Tribunal orders the Respondent within 28 days of the date of this decision to repay to the Applicants jointly and severally the sum of £300 representing their application fees (£100) and hearing fee (£200).

6 The Tribunal's calculations are shown on the attached schedule which forms part of this Decision.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE . A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The document which the Tribunal was referred to are contained in electronic bundles comprising approximately 1000 pages the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1 The Applicants are the tenants and long leaseholders of various flats at Southview Court Old London Road Hastings East Sussex TN35 5BN (the property) of which the Respondent is the landlord and reversioner.

2 On 03 July 2020 the Applicant tenants filed an application under s27A and s20C Landlord and Tenant Act 1985 relating to service charges for the period 2013-14 onwards and under Sched 11 Commonhold and Leasehold Reform Act 2002 relating to administration charges which they alleged were incorrectly levied on them by the Respondent management company.

3 Directions were issued by the Tribunal on 8 July 2020, 17 August 2020, 28 September 2020, 12 October 2020, 02 December 2020 and 13 January 2021. The Directions restricted the Tribunal's enquiries to the years 2015-16 onwards.

4 The Tribunal received and read over 1000 pages of electronic documentation, including the parties' respective statements of case, Scott schedules and witness statements which are referred to below. Additional documents which the Tribunal only received on the morning of the hearing were not considered during the hearing and no oral application for their inclusion was made at the hearing.

6 The hearing took place by way of a remote video (CVP) link to which the parties had previously consented. The Applicants were represented by Mr G Okines and the Respondent was represented by Ms K Richmond of Counsel. Mr Etherton, the sole Director of the Respondent company did not attend the hearing and had not filed a witness statement. His solicitors said that he was too unwell to attend the hearing but no medical evidence was supplied to support that statement. They did not make an application for an adjournment of the hearing.

7 In accordance with current Practice Directions relating to Covid 19 the proceedings were recorded and the Tribunal did not make a physical inspection of the property but were able to obtain an overview of its exterior and location via GPS software and from photographs supplied by the Applicants and included in the hearing bundle.

8 The Tribunal understands that Southview Court comprises 39 two bedroom flats spread across three blocks situated on a busy road on the outskirts of Hastings. The property is on sloping ground and its site includes a garden area, roadway and garages. Some of the garages are used by the Applicants. The site also contains a number of houses which the Tribunal was told formed part of the original development of the estate, some of which are still leasehold, and which it is assumed would therefore contribute to the maintenance of the common parts of the estate (garden and grounds). The Tribunal was informed that some of the houses had been enfranchised and it was not known to what extent if any these freehold properties remained subject to estate charges. The Respondent stated that the houses remained bound to contribute both to insurance and maintenance but gave no details of the extent of these obligations (page 102).

9 The Respondent is a management company specifically set up to deal with this property and the surrounding estate as described above. Mr P Etherton is the sole Director of the Respondent company and he is also the sole registered proprietor of the head lease of the estate (including the property) which he acquired in 2016. Prior to his acquisition Mr Etherton had worked as a handyman for Stace & Co who were then the managing agents and continued to act as such for a short time after Mr Etherton's acquisition. In 2017 Mr Etherton took over the maintenance of the estate himself without the assistance of professional managing agents and set up the Respondent company to act nominally as managing agents but continued to carry out most of the work, including gardening, himself through his unincorporated sole proprietor business called Clive Vale Property (Maintenance).

10 The Applicants' concerns relate not only to the standard of work being carried out and, they say, the deteriorating state of the estate, but also to the manner in which they are charged for the works. They say that the proportions charged to them are inconsistent and not in compliance with the lease terms. They are concerned that the amounts charged to them do not equate with the amounts spent, that charges are made at the wrong intervals (quarterly rather than annually as per the lease). The Respondent's persistent failure to provide information or documentation to support the claimed expenditure makes it impossible to reconcile the figures.

14 This situation is compounded by the manner in which the Respondent presents the accounts. The service charge demands are made quarterly starting from January each year but the annual accounts run from September to September making reconciliation of the two unnecessarily complex (pages 148-153). The lease provides for the accounting year to be June -June. The Respondent accepts that he has been issuing demands for the incorrect accounting period (page 105) but he does not appear to accept that in future his accounting periods should comply with the provisions set out in the lease (page 105).

15 Additionally, the Respondent accepts in his own statement of case that on the occasions when he employs a third party to carry out works, the

third party's invoice is replaced in the accounts by a handwritten invoice from the Respondent (some of which are extremely difficult to decipher, see page 167). The Applicants therefore have no means of checking what work was actually done by the third party nor how much the third party invoiced the Respondent for the work. In his statement the Respondent also states that he 'surcharges' SE estates for works done by outside contractors (page 108). The use of this word infers that the Respondent has added an extra charge to the service charge in addition to the sum payable to the outside contractor. As the original invoices from the outside contractors have not been supplied it is impossible to verify the true situation. The addition of a surcharge would be a wholly unacceptable practice which should be ceased forthwith.

16 Clause 28(b) of the lease permits the landlord to do works (such as repairs) himself and to charge the tenants for that work but only to the same extent as an outside contractor would have charged and no more. This clause however would not justify the Respondent in charging the fee of a qualified professional for his own work in a situation where the Respondent did not possess the same skills equipment or qualifications e.g. for electrical works.

17 The Respondent also accepts that he had demanded ground rent as part of the service charge (page 106). Not only is this practice unacceptable, the addition of the ground rents to the service charge has the effect of inflating the amount of the service charge and thus also of the administration charge made by the Respondent, the amount of which is set as a fixed percentage of the total service charge. Ground rent must in future be separately demanded and held in an account separate from the service charge account.

18 The Applicants claimed that when the Respondent took over the property from the previous owner the service charge accounts showed a reserve fund of approximately £12,000 which is not accounted for in the subsequent year's accounts and no viable explanation has been provided for its use or absence. The Tribunal does not accept the Respondent's suggestion that there was no reserve as the accounts show its previous presence and conspicuous absence in the 2015-6 accounts. In the absence of any conclusive evidence the Tribunal is unable to take this matter further.

19 The Respondent avers that the accounts must be correct because they have been certified by the accountants. This argument is flawed because the accountants would only have been able to prepare the accounts based on the information supplied by the Respondent. If that information was inaccurate then it follows that the accounts will also contain errors.

20 It appears that the individual amounts charged to the Applicants have varied and are not consistent with the apportionment of the service charges as set out in the lease (pages 147-153). The terms of each lease must be strictly adhered to when demands for service charge (and separately, ground rent) are made.

21 Turning now to the specific challenges to the service charge accounts. The issues raised by the Applicants are (subject to minor variations)

essentially the same in each year, are supported by the same arguments from the Applicants and the same explanations or lack of explanations from the Respondent. The Tribunal will deal below with the full arguments in relation to the year in which they are first raised but will not repeat those arguments in detail for subsequent years except where there is a material difference. A full schedule of the allowed/disallowed figures in each category and for each year is appended to this Decision. All allowed sums are payable by the Applicants in the proportions set out in their respective leases.

22 For the year 2015-6 the Respondent claimed a total of £8,717.09 by way of reimbursement of the insurance premium. The Applicants challenged this amount as being excessive and produced an alternative quote for a much lower sum (page 193). Although the Tribunal understands the Applicants' concerns it is unable to accept their alternative quotation for this or subsequent years because they are not like for like with the Respondent's policy. The Applicants had not appreciated that the lease required the Respondent to insure not just the flats but also the 'estate' (grounds, roadways etc) and that it covered the houses on the estate which, the Tribunal understands, are also required to contribute to the insurance cost. The Respondent's policy is with a reputable insurer and covers an acceptable range of risks and had been assessed in relation to a recent re-valuation of the property. The Tribunal therefore finds that this sum is reasonable and allowed in full. Similar arguments apply to subsequent years which are also allowed in full.

23 The only other item specifically challenged by the Applicants for the year 2015-16 was the Respondent's administration charge which has been wrongly calculated on two grounds. First, the Respondent has calculated his percentage on a total sum which includes £2,379.40 attributable to ground rents. As noted above, this must be deducted as it is not a service charge. Secondly, the Respondent has charged the fee at 12.5% plus VAT whereas the lease only permits a maximum of 10% to be charged. Having made deductions for these two errors, the amount of administration charge allowed for this year is £4,225.89. Similar arguments and deductions apply to subsequent years as shown on the attached schedule.

24 The management of the property was taken over by the Respondent in person (through his own management company) in 2017 which gave rise to further complaints from the Applicants. The Respondent was charging £979.50 each month for garden maintenance which the Applicants considered to be too much given the limited amount of work done and the parlous standard of work. One area of grass was left uncut, which the Respondent claimed was a wildlife garden area and had won 'numerous national awards/commendations' (page 138). The only evidence provided of awards was for 3 commendations from one local organisation.. Photographs of the garden supplied by the Respondent were undated and, other than the wildflower garden, do not show either the full extent of the grounds or evidence of any of the work claimed to have been done. Undated photographs supplied by the Applicants were said to have been taken recently i.e. for the specific purpose of these proceedings. They do not therefore provide evidence

of the state of the grounds in 2017 but the appalling proliferation of weeds, rubbish, well established saplings growing in drains, lamp standards lying on the ground etc shown in these photographs demonstrate that maintenance of the grounds must have been of a very poor quality for a number of years. On that basis it reduces the sum allowed to £6,300 to take account of the inadequacies of the service provided by the Respondent. This figure equates with a quotation for maintenance supplied by the Applicants (page 201). Similar arguments and reasoning applies to subsequent years as shown on the attached schedule.

25 The Applicants asserted that the gardening contract was a long term contract and was subject to the notice procedures under s20 Landlord and Tenant Act 1985 of which there was no evidence in the bundle for this nor in relation to any other item in the Scott schedule. Repairs amounting to £20,728.94 were charged in 2017 which included the sum of £3,600 for qualifying works carried out in the previous year for which no s20 procedure appears to have been carried out. The invoices supplied only total £15,943.83 leaving a shortfall of £4,797.60 unaccounted for. Not only is it impossible to reconcile the figures for this item, the Applicants also challenge the sum demanded on the grounds of reasonableness saying that the Respondent has overcharged for the works done. Further, they say he has charged professional rates for work undertaken by himself and which he was not qualified to do. They maintain that a qualified professional person with the right skills and equipment could have carried out the work more efficiently and at lower cost. Whilst the accounts may refer to some items as "Major Works" the Tribunal is not satisfied that this description means that they are subject to S.20 consultation. However, in the light of the issues referred to above the Tribunal allow only 50% of the sum claimed (£10,364.47) in respect of repairs for this year. Further examples of the same issue appear in later years and are illustrated by incompetently carried out electrical works and repeated charges for drain clearing when, the Applicants aver, a drainage professional with the right equipment could have resolved the problem in one visit. The reduced figures for subsequent years are shown on the attached schedule.

26 Legal and professional fees amounting to £1,980 and unsupported by an invoice are disallowed. These are said to relate to costs attributable to the landlord's freehold company and to setting up the new management company (pages 182 and 400). As such they are not service charge items and have no place in the service charge accounts.

27 For the year ending 2018 apart from the items discussed above the Applicants challenged the figure of £950 of the £1,400 charged for accountancy. The Tribunal accepts the Respondent's explanation that extra work and expense was required because the Respondent was required to have the accounts audited and certified but does not accept that £1,400 is reasonable. The Tribunal allows £950 for 2018 and the following year.

28 However, the bookkeeping charge of £3,530 is reduced by the Tribunal to £1,000. It is evident from the evidence produced by the Respondent that bookkeeping was not his forte, and some assistance with this task may be reasonable, but given the limited nature of the task (in that

most of the invoices emanated from the Respondent himself) the Tribunal considers that the sum of £3,530 is excessive for the amount of work which should have been involved. The same deduction is made in subsequent years and shown on the attached schedule.

29 Of the £2,286 charged for consultancy, the sum of £1,386 is allowed for a fire safety survey. The balance, which appears to have been paid to the former owner of the property, has not been substantiated by the Respondent and is disallowed. A similar charge in 2019 is also disallowed.

30 The charge for sundries (£247.02) which seems to relate to assorted stationery and computer items which should be covered by the general 10% administration fee is disallowed for both this year and the subsequent years in which a similar charge is claimed. There is no provision for this type of charge to be made under the lease. Very small sums for justified items relating to the property itself have been allowed in 2016 (£35) and 2017 (£6).

31 The final year under consideration, year ending 2019, has a similar pattern and outcome to the preceding years with deductions of £46,573.85 being made from a total sum claimed of £88,032. These sums are itemised on the attached schedule, the reasoning for the deductions mirroring the arguments recited above. In relation to repairs the Respondent stated that part of the charge (totalling £33,055) related to the setting up of a reserve fund. There is however no evidence of this in the accounts provided.

32 The Tribunal is unable to deal with an estimate for the year ending 2020 because no accounts, other than company accounts relating to the management company which are not relevant to the service charge, have been provided.

33 The Applicants asked the Tribunal to make an order under s20C Landlord and Tenant Act 1985 restricting the Respondent from recovering litigation costs through the service charge. Having heard representations from both parties the Tribunal determines that it will makes such an order in favour of the Applicants as named above and for an unlimited amount. With the exception of insurance, none of the Respondent's arguments have been substantiated or justified. His reluctance to provide information to the Applicants whether requested by them or ordered by the Tribunal has both complicated this case and extended the time needed to deal with it. The Tribunal also orders the Respondent to repay to the Applicants the sum of £300 representing the cost of their application and hearing fees.

34 **The Law**

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.

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

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

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

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

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

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

Section 47 Landlord and Tenant Act 1987

(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a)the name and address of the landlord, and

(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

(a)a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service

charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.
(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 19 March 2021

Southview Court **CHI/21UD/LSC/2020/0061** **Appendix**

	Allowed	Claimed	Disallowed
2015/16		**£50,958.90**	
Allowed by Tribunal			
Insurance	8,717.09		
Electricity	1,247.05		
Cleaning	1,050.00		
Gardening	8,970.50		
Maint&Reps	21,383.66		
Entryphone	408.00		
Bank Charges	87.60		
Accountancy	360.00		
Sundries	35.00		
	42,258.90		
Admin @10%	4,225.89		
Total allowed		**£46,484.79**	
Disallowed			£4,474.11
2016/17		**£50,888.58**	
Insurance	4,462.64		
Electricity	1,276.82		
Cleaning	1,650.00		
Gardening	6,300.00		
Maint&Reps	10,364.47		
Bank Charges	153.38		
Accountancy	450.00		
Sundries	6.00		
	24,663.31		

Admin @10%	2,466.33		
Total allowed		**£27,129.64**	
			£23,758.94
2017/18		**£59,195.83**	
Insurance	16,338.04		
Electricity	0.00		
Cleaning	1,520.00		
Gardening	6,300.00		
Maint&Reps	7,257.81		
Bank Charges	64.23		
Accountancy	950.00		
Bookkeeping	1,000.00		
Fire safety consultancy	1,386.00		
Sundries	0.00		
	34,816.08		
Admin @10%	3,481.61		
Total allowed		**£38,297.69**	
Disallowed			£20,898.14
2018/19		**£88,032**	
Allowed by Tribunal			
Insurance	12,500.00		
Electricity	2,965.00		
Cleaning	1,776.00		
Gardening	6,300.00		
Maint&Reps	16,527.50		
Computer costs	0.00		
Printing postage and stationery	0.00		
Bank Charges	321.00		
Accountancy	950.00		
Bookkeeping	1,000.00		
Prof fees	0.00		
Sundries	0.00		
	42,339.50		
Admin @10%	4,233.95		
Total allowed		**£46,573.45**	
Disallowed			£41,458.55
Total disallowed			**£90,589.74**

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 by email to rpsouthern@justice.gov.uk.
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.