FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/OLR/2018/1414** **LON/00AZ/LSC/2019/0133**
Property	**:**	**Flat B 37 Canadian Avenue, London SE6 3AU**
Applicant	**:**	**Mr Carmine Esposito (leaseholder)**
Representative	**:**	**Ms K Gray of counsel**
Respondent	**:**	**Mr Ajay Kumar Anand (freeholder)**
Representative	**:**	**Mr Kamlesh Kumar Anand of KLPA & Co; managing agent**
Type of application	**:**	**Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993** **and** **Section 27A Landlord and Tenant Act 1985**
Tribunal Judge	**:**	**Judge Pittaway** **Mrs E Flint FRICS**
Date of hearing and venue	**:**	**17 and 18 September 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**31 October 2019**

DECISION

Summary of the tribunal's decision

The Service Charge Application

1. The applicant is not liable for the arrears of ground rent and service charge which accrued before he became a registered proprietor of the property on 29 July 2010.

2. The applicant is liable to pay the respondent £600 by way of ground rent for the period to 24 March 2019.

3. The applicant is not liable to pay any service charge (other than insurance premiums) in respect of the period before 21 July 2017, being 18 months from the date upon which his solicitors received various service charge demands.

4. The applicant is liable to pay the insurance premiums for the years 2011 to 2014 (inclusive) and 2018, in the amounts set out in the decision.

5. None of the management fees, accountants' fees, interest and administration charges are recoverable from the applicant under the terms of the lease.

6. The applicant is not entitled to set off sums that he has spent on carrying out repairs to the property against his service charge payments.

7. It is just and equitable that the tribunal make an order under section 20C of the 1985 Act.

The Lease Extension Application

8. The tribunal approve the applicant's draft of new lease, to be found at pages 82-88 of the applicant's hearing bundle, once the agreed premium has been inserted, and clause 2.1 amended so that the lease is let with "limited title guarantee".

The Applications

9. On 5 November 2018 the applicant leaseholder made an application, pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the **1993 Act**") for a determination of the premium to be paid for and the terms of a new lease to be granted in respect of Flat B 37 Canadian Avenue, London SE6 3AU (the "**property**") (the "**New Lease Application"**)

10. By the date of the hearing the premium for the extended lease had been agreed between the parties at £22,500 (on 24 June 2019) but the other terms of the new lease remained to be determined.

11. Directions were issued in respect of the New Lease Application on 26 November 2018.

12. By an application dated 22 March 2018 the applicant applied for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("**1985 Act**") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**2002 Act**") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years from 2010 to 2019 (inclusive) (the **"Service Charge Application"**).

13. Directions were issued in respect of the Service Charge Application on 18 April 2019 (varied on 29 April 2019) which provided that the Lease Extension Application and the Service Charge Application should be heard together.

Background

14. The property is the ground floor flat at 37 Canadian Avenue London SE6 3AU. The tenant is the registered proprietor of the lease of the property dated 13 July 1987 for a term of 99 years from 25 March 1987 at a ground rent of £100 rising to £200.

15. From the official copies of the freehold title it appears that there are four flats in the property.

The Hearing

16. The tribunal considered both the New Lease Application and the Service Charge Application at the hearing on 17 and 18 September. Ms Gray of counsel represented the applicant. Mr Anand of the managing agents of the respondent, KLPA Company, represented the respondent. He confirmed that he had represented his client before at previous tribunal hearings.

17. The Service Charge Application was heard first and then the Lease Extension Hearing.

18. The tribunal had before it a hearing bundle prepared by the applicant's solicitors, which contained all the key documents, and which had been provided to it by 4 July 2019 in accordance with the Directions of 18 April as varied. The tribunal also had before it a bundle provided by the respondent which was received by it on 29 July. Amended pages to the respondent's bundle were offered by Mr Anand at the start of the hearing on 18 September. In addition, the tribunal had a skeleton argument on behalf of the respondent.

19. The applicant's bundle contained a copy of the lease of the property together with copies of the freehold and registered leasehold titles.

Inspection

20. Insofar as the Lease Extension Application is concerned only the terms of the new lease were in dispute. Insofar as the Service Charge Application is concerned the sums in question are ground rent and liability to pay and reasonableness of management fees, insurance, interest and accountancy charges. Accordingly, no inspection was necessary.

Preliminary Issues

Admissibility of documents

21. At the start of the hearing Ms Gray raised the admissibility of the documents disclosed in the respondent's bundle. It was her submission that this bundle was the disclosure directed to be provided by 16 May and that it had only been delivered to the applicant's solicitors on 29 July 2019. Ms Gray also drew the tribunal's attention to the fact that the respondent had provided no statement of case nor any signed witness statements, which the directions required be provided by 13 June. Ms Gray submitted that the tribunal should ignore the documents contained in the respondent's bundle and that Mr Anand should not be permitted to give evidence at the hearing.

22. Mr Anand made conflicting submissions to the tribunal about this late delivery. He claimed that the documents had been sent on 29 April, but that he had not sent them to the applicant's solicitors (despite this being required by the amended directions) but to the applicant's surveyor. He also said that it was in May/June that the documents were sent to the applicant's surveyor. He then claimed that he had written to the solicitors on 29 April but only in relation to the Lease Extension Application. He also stated that the bundles had been sent to the solicitors and the tribunal on 29 July.

23. Mr Anand then questioned the admissibility of a second witness statement by the applicant given that it had only been delivered shortly before the hearing. The tribunal understood from Ms Gray that this statement had sought to address issues raised in the respondent's bundle, on the basis that it might be admitted by the tribunal.

24. The tribunal was not persuaded by Mr Anand's chronology of events as it was in itself contradictory. It notes that on 26 April Mr Anand wrote to the tribunal seeking a time extension for complying with the directions, which was granted, but that he then does not appeared to have complied with the amended directions. The tribunal considers that,

notwithstanding Mr Anand's assertions to the contrary, the applicant did not receive any documents from the respondent in relation to the Service Charge Application until 29 July.

25. In the interests of dealing with the Service Charge Application fairly and justly, which is the overriding objective of the tribunal under Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the tribunal were prepared to admit the documents in the respondent's bundle and so advised the parties at the hearing. Although they were not delivered until 29 July this had given the applicant sufficient time to consider them, and Ms Gray was invited to cross examine Mr Anand on them.

26. The tribunal directed that Mr Anand should not be permitted to give evidence in the absence of any statement of case or witness statement from him, or the respondent.

27. Ms Gray accepted that in the circumstances the applicant's second witness statement need not be considered by the tribunal.

Ground rent

28. During the hearing, Mr Anand questioned the tribunal's jurisdiction to determine liability to pay the ground rent as part of the Service Charge Application.

29. The tribunal rejected Mr Anand's challenge. The tribunal reminded him that, as stated in the directions, the tribunal judge is empowered to deal with issues relating to ground rent as a result of amendments made to the County Courts Act 1984, by which judges of the First-tier Tribunal are now also judges of the county court. This means that in a suitable case the judge can also sit separately as a judge of the county court and decide issues that would otherwise have to be separately decided in the county court; resulting in savings in time, costs and resources. The judge of the tribunal took the view that this was such a suitable case.

The Issues

The Service Charge Application

30. At the start of the hearing Ms Gray identified the following issues between the parties on the Service Charge Application;
    (i) Whether as a matter of law the applicant is liable to pay ground rent, service charge and administration charges demanded before he was registered as proprietor of the property in July 2010;
    (ii) Whether appropriate ground rent demands had been served in respect of the ground rent alleged to be owing;

(iii) Whether valid service charge demands had been served on the applicant, with correct summaries of rights and obligations;
(iv) Whether charges for managing agent's fees, interest and accountancy fees are recoverable under the lease;
(v) If recoverable is the managing agent's fee reasonable;
(vi) The reasonableness of the insurance premium charged in each year;
(vii) Whether the applicant is entitled to set off sums against service charge that he has spent in repairing the property;
(viii) Whether administration charges and interest are recoverable under the lease and if so are the sums demanded reasonable.

31. It was initially thought that the applicant had made certain payments which had not been set off against the sums demanded. During the hearing it became clear that although the applicant might have proferred cheques in payment of certain insurance premiums these cheques had never been cashed by the respondent.

32. There was also an application by the applicant under section 20C of the 1985 Act.

The Lease Extension Application

33. Ms Gray identified that it was the terms of the new lease that are at issue.

Decisions of the tribunal and reasons

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

The Service Charge Application

35. The legal provisions not referred to in the reasons for the decision relevant to the Service Charge Application are set out in the Appendix to the decision.

Liability pre-29 July 2010

36. Of the ground rent and service charge sought by the respondent £4,451.67 relates to charges which accrued before 29 July 2010, which Ms Gray stated was the date upon which the applicant was first registered as a proprietor of the property.

37. Mr Anand questioned the date upon which the applicant had become the registered proprietor, pointing to the fact that the official copies in the applicant's bundle showed him to have been registered on 10 December 2014. Ms Gray explained that the applicant had been a joint tenant of the

property with his former partner from 29 July 2010 and that 10 December 2014 was the date upon which he was registered as sole proprietor.

38. The tribunal notes that Entry 2 of the Proprietorship Register is an entry dated 29 July 2010 stating the price paid for the property on 22 July 2010. The tribunal accepts that the applicant has been a registered proprietor of the property since 29 July 2010.

39. Ms Gray submitted that as the lease is an old lease for the purposes of the Landlord and Tenant (Covenants) Act 1995 and the service charge is not reserved as rent but governed by a separate covenant in the lease the assignee tenant is not liable for arrears which accrued prior to the assignment: he is only liable in respect of covenants which he has breached. She referred the tribunal to *Service Charges and Management* 4th edn, 30-08.

40. It was Mr Anand's submission that the applicant should have been made aware of the arrears when he purchased and that he should therefore be responsible for the arrears. Mr Esposito gave evidence that he had been aware of possible rent or service charge arrears when he bought the flat, but he had understood that he would only be responsible for arrears that accrued after he became the registered proprietor.

41. The tribunal accept Ms Gray's submission that the applicant is not responsible for arrears of ground rent and service charge which accrued before the applicant was registered as proprietor of the property. That the applicant was aware of the arrears is not relevant, as they are not his responsibility.

Liability to pay ground rent and service charge demanded post 29 July 2010

42. It was Ms Gray's submission that the applicant had received no rent or service charge demands, other than some demands for insurance premiums, and that the respondent had provided no evidence of service of such ground rent and service charge demands. She put it to Mr Anand that he had not challenged the applicant's evidence that he had never received the demands to which Mr Anand replied that the demands had been sent by post.

43. In his evidence Mr Esposito referred the tribunal to rent demand notices contained in the applicant's bundle. The rent demands are dated 10 February 2010, 2 February 2011, 5 February 2012,8 February 2013, 10 February 2014, 5 February 2015, 5 February 2016, 2 February 2017 and 5 February 2018. He also referred to the service charge demands in the applicant's bundle dated 6 January 2011, 6 January 2012, 5 January 2013, 6 April 2014, 6 January 2015, 6 January 2016, 6 January 2017 and 2 January 2019. All the demands are from KLPA Company. Mr Esposito denied having received any of these demands before they were received by his solicitors on 21 January 2019.

44. The bundle of demands provided by Mr Anand also includes a rent demand dated 25 March 2019 for the rent from 25 March 2019 and a service charge demand dated 31 December 2017. These are not in the bundle of demands which Mr Esposito gave evidence had been provided to his solicitor.

45. Ms Gray cross examined Mr Anand as to why all the summaries of Tenant's Rights and Obligations on the service charge demands referred to the "First tier tribunal", when the demands for 2011-2013 pre-dated this nomenclature of the tribunal. Mr Anand made no response, but at the start of the second day of the hearing sought to substitute for the demands that contained the incorrect reference demands that referred to Leasehold Valuation Tribunal, on the basis that a clerical/computer error had been made.

46. In his evidence Mr Esposito confirmed that during his ownership of the property he had received building insurance demands, and that he had sent the respondent the following cheques;

£446.50 for the year ending 31 December 2011
£535.25 for the year ending 31 December 2012
£513.78 for the year ending 31 December 2013 and
£609.87 for the year ending 31 December 2014.

It was accepted by Mr Esposito at the hearing that the cheques had not been cashed. Mr Anand said they had not been cashed because the applicant had not received notice of the assignment to Mr Esposito. The applicant's bundle contained a letter from his solicitors dated 23 December 2011 addressed to Mr K K Anand in which they refer to Notice of Transfer and Charge having been sent to him on 22 July 2010.

47. The tribunal note that all the rent demands are addressed to "present lessee or occupier" and all describe the property (incorrectly) as "Flat No B Candian Avenue London SE6 3AU". It notes other errors that are repeated in various of the demands. It further notes that the rent demands of 2 February 2011 and 5 February 2012 each contain a note addressed by name to "Mr Esposito", which is inconsistent with Mr Anand's evidence that he did not know that the applicant had acquired the property until 2014. Finally the tribunal note that while all the demands provided are in the name of KLPA Company, the applicant's bundle contains letters from Cheal Asset Management Limited, of which Mr K Anand is the managing director, suggesting that it was this company and not KLPA Company that was managing the property up to, at least, 2012.

48. The tribunal is not persuaded by Mr Anand's explanation of a "clerical error" in relation to those of the demands which relate to the period before the existence of the "First-tier property tribunal." The repetition of errors suggests that all the demands may have been created at the same time.

49. Ms Gray submitted that the respondent had not produced evidence of service of the ground rent demands. This is correct however the tribunal note Mr Esposito's evidence that he had received none of the ground rent and service charge demands referred to above (other than the insurance demands to which he referred) before they were received by his solicitors on 21 January 2019. He clearly accepts having received them through his solicitors on that date.

50. Section 166 (1) of the Commonhold and Leasehold Reform Act 2002 provides

> *A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.*

51. Ms Gray correctly submitted that Section 19 of the Limitation Act 1989 provides

> *No action shall be brought to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of six years from the date on which the arrears became due.*

52. The rent demand dated 25 March 2019 does not appear to have been served on the applicant. Accordingly the tribunal determine that the applicant is liable to pay the ground rent of £100 per annum for the rent due within six years of January 2019; namely £600.

53. Section 20B (1) of the 1985 Act provides

> *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.*

54. On the basis of the service charge demands served on the applicant on 21 January 2019 the only year for which the applicant is liable to pay service charge is 2018. There is no evidence before the tribunal that the respondent included the service charge demand dated 31 December 2017 in the demands sent to the applicant's solicitor on 21 January 2019.

55. Section 20B (2) of the 1985 Act provides

> *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.

56. The applicant had clearly received insurance premium demands for the years to December 2014, and the applicant is accordingly liable to pay insurance premium for these years. As the premiums were otherwise demanded as part of the service charge demands the only other year for which the applicant is liable is the year to December 2018, for the reason given above.

The reasonableness of the insurance premiums

57. Ms Gray accepted that insurance premiums are recoverable under the lease but submitted that the premiums demanded were unreasonable. Citing *COS Services Ltd v Nicholson* [2017] UKUT 0382 (LC) she submitted that it was for the respondent to explain the process by which the particular policy and premium had been selected. She drew the tribunal's attention to the fact that the copy insurance policy and schedules had not been disclosed although the respondent had been directed to do so. The applicant's bundle contained comparables obtained by Mr Esposito.

58. Mr Anand objected to the comparables on the basis that they indicated that Mr Esposito was the landlord.

59. The tribunal had the benefit of the Certificates of Insurance provided in the respondent 's bundle in considering the reasonableness of the insurance premiums. They note that the insurance is with Zurich Insurance PLC. For the years for which the applicant is liable the sum insured and premium ranged from a declared value of £476,061 in the year to 31 December 2011 to a declared value of £546,480 and premium of £2,121,27 in the year to 31 December 2014. The total premiums for the years in question were £1705.21 , £1,787.06, £1,946.11 and £2,121.27. In the year to 31 December 2018 the buildings sum insured was £877,500 and the premium £1,827.80.

60. By clause 4(4) of the lease and paragraph 2 of the Fourth Schedule the tenant is responsible for two eighths of the premium paid by the lessor for the insurance of the building.

61. The tribunal note that Mr Esposito's comparables were not on a "like for like" basis in that the sum insured was lower (one of his comparables was for a sum insured of £300,000 at a premium of £243.74). They also note that while the sum insured by the landlord has increased the premium for the year 2018 is less than that for the year 2014. In the absence of evidence to the contrary they consider the following sums, based on the premiums set out in the Zurich Certificates of Insurance provided by the respondent in his bundle, to be reasonable:

2011: £426.30
2012: £446.77
2013: £486.53
2014: £530.32
2018: £456.95

Recoverability of managing agent's fees and accountancy fees, interest and administration charges

62. Ms Gray submitted that neither managing agent's fees nor accountancy fees are recoverable under the terms of the lease. She referred the tribunal to the need for an express provision for managing agents fees to be recovered, citing the decision in *Embassy Court Residents Association v Lipman* [1984] 2 EGLR 60. Insofar as accountants' fees are concerned she submitted that the lease does not require the provision of accounts and none have been provided to the applicant.

63. On interest and administration charges Ms Gray submitted that the lease does not provide for their recovery.

64. Mr Anand submitted that the applicant should have known that he would have to pay management fees, without pointing the tribunal to any provision in the lease under which the respondent is entitled to charge these. He similarly submitted the respondent was entitled to charge accountants' fees for his, Mr Anand's preparation of management accounts, on which he told the tribunal he is a specialist. On interest he submitted that the respondent was entitled to charge this by analogy with the position in the county court. He did not make any submission as to why administration charges are recoverable under the lease.

65. The tribunal agree with Ms Gray that none of management fees, accountants' fees, interest and administration charges are recoverable under the terms of the lease and the tenant is therefore not liable to pay these.

Set off

66. Ms Gray submitted that the applicant should be entitled to set off the sum of £3900 which he spent on repairs to the property against any sums demanded by the respondent from him. This was on the basis that the sums the applicant had spent ought to have been recoverable under the insurance policies, the details of which the respondent had refused to disclose.

67. It was Mr Anand's submission that the applicant should not have been allowed to make a claim under the insurance policy as that might have increased the premium. He further submitted that the tenant should have undertaken consultation with the other tenants before undertaking the works as that would have spread the cost between all

of them. He also submitted that he should have complied with the consultation requirements of s 20 of the 1985 Act.

68. Mr Anand should have provided a copy of the insurance policy to the applicant. Clause 6(4) of the lease contains a covenant by the landlord

To insure and keep insured the building during the term….and to produce to the Lessees on demand the policy or policies of such insurance and the receipt for every payment."

However no evidence was provided to the tribunal that the nature of the works were such that they would have been recoverable under a normal insurance policy.

69. Mr Anand's submission that the tenant should have consulted the other tenants in the building before carrying out the works is misconceived. Section 20 (2) provides

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.

Section 20 consultation is required before "qualifying works" are carried out, but these are works the cost of which is recoverable by way of service charge . The work which the applicant carried out was not "qualifying works".

70. Clause 3 of the lease contains covenant by the lessee with the lessor

"Jointly (and in the proportions provided in the Fourth Schedule hereto as to all costs and expenses involved) with the Lessor or other the Lessees Owners and Occupiers of the flats in the building throughout the term to maintain repair cleanse and redecorate as and when necessary renew the roof main walls and foundations boundary walls and fences of the building and all parts of the building capable of being used in common by all the Lessees and there shall be included as being used in common the roof main walls and foundations common gutters rain water pipes drains gas pipes electric cables and wires in or upon the building television aerials and common forecourts hallways and staircases entrance doors and gateways of the building where they are used in common with the owner or occupier of the other flats in the building pathways"

71. Mr Esposito gave evidence that the works for which he paid were the repointing of the exterior kitchen and bedroom walls in March 2015 and June 2015, as they showed signs of deterioration and damp was occurring which required urgent attention.

72. The tribunal consider on the evidence before it that the work carried out was an obligation on Mr Esposito as lessee under clause 3, and the cost cannot be set off against the service charge.

Section 20C of the 1985 Act.

73. Ms Gray made an application under section 20C of the 1985 Act submitting that the applicant had been forced to make the application as the respondent was refusing to grant the lease extension without a determination of the ground rent and service charge liability. Further that failure by the respondent to comply with the tribunal's directions had caused the dispute to become unduly protracted.

74. It was Mr Anand's submission that section 20C did not apply as the majority of the costs had been incurred in connection with the lease extension and would be recoverable under Section 60 of the 1993 Act.

75. That costs may be recoverable under section 60 of the 1993 Act does not disapply section 20C in relation to costs incurred in connection with the Service Charge Application.

76. The tribunal consider that the respondent failed to engage meaningfully with the tribunal's directions and to comply with the timetable set out in those directions, even after it had been altered at his representative's request. The tribunal also note that the respondent has sought to charge for costs through the service charge which are not properly so recoverable. For the avoidance of doubt and to bring finality the tribunal make an order under section 20C so ensure that there is no risk that the respondent pass his costs in connection with the Service Charge Application through the service charge.

The Lease Extension Application

77. The tribunal's jurisdiction stems from sections 91(1), 91(2)(a)(ii) and 91(12)(a) of the Leasehold Reform, Housing and Urban Development Act 1993, as amended by paragraph 119 of Schedule 1 to the Transfer of Tribunal Functions Order 2013, which together state:

> *(1) … any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.*
>
> *(2) Those matters are—*
> *(a) the terms of acquisition relating to …*
> *(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II …*
>
> *(12) For the purposes of this section, "appropriate tribunal" means-*
> *(a) in relation to property in England, the First-tier Tribunal …"*

78. On 5 November 2018 the applicant leaseholder made the New Lease Application in respect of which Directions were issued on 26 November 2018.

79. By the date of the hearing the premium for the extended lease had been agreed between the parties at £22,500 (on 24 June 2019) but the other terms of the new lease remained to be determined, and the tribunal was presented with two competing draft leases, one from the landlord and one from the tenant.

80. From the draft lease in the bundles before the tribunal it appears that the respondent issued a draft lease dated 30 November 2018 to the applicant. This is in accordance with the Directions.

81. Direction 2 required the tenant to return the draft lease to the landlord with any amendments shown in red by 24 December 2018. By around 20 December 2018 the tenant's solicitors had returned the landlord's draft lease to him deleted in its entirety and submitting an alternative draft lease to the landlord for approval.

82. It is Ms Gray's submission that the applicant, in his section 42 Notice sought a new lease on statutory terms, with all other terms remaining as set out in the existing lease and that counter-proposals in the respondent's counter-notice only related to premium and payment of arrears of ground rent and service charge. The lease drafted by the landlord sought to amend the existing lease. In particular, it added definitions, altered the definition of the demise, altered the lessee's covenants, added additional charges for giving consent, amended the costs clause and the section 196 clause. It also contained typographical errors. It was her submission that the new lease ought to be a very simple document incorporating the original lease and reflecting the statutory terms and that the applicant's draft was such a document.

83. It was Mr Anand's submission that it was for the landlord to draft the lease and in this regard referred the tribunal to Regulation 7 of the Leasehold Reform Regulations 1993. He submitted that by returning the original draft struck through in its entirety form of and proposing an alternative draft the applicant was not complying with the Directions. He asked the tribunal to confirm that the form of lease should be that which he had submitted.

84. Section 56 of the 1993 Act sets out the landlord's obligations to grant a new lease and the only mandated changes are that the rent should be reduced to a peppercorn and the term should expire 90 years after the term date of the existing lease.

85. Section 57 of the 1993 Act sets out the terms on which the new lease is to be granted. The starting point, in section 57(1), is that "*the new lease to*

be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease…" (emphasis added). Section 57 then goes on to specify very limited grounds to modify the terms of the existing lease. The only relevant grounds are those set out in section 57(6), which states (again, with emphasis added):

> *(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—*
>
> *(a) it is necessary to do so in order to remedy a defect in the existing lease; or*
>
> *(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the* suitability on the relevant date of the provisions of that lease."

86. The tribunal's view is that the changes that Mr Anand seeks do not fall within section 57(6), as there is no term to be excluded or modified, there is no defect in the existing lease and there have been no changes since date of the existing lease.

87. While it might have been more appropriate for the applicant's solicitors to have sought to amend the respondent's draft rather than rejecting it entirely, of the two leases before the tribunal that of the applicant, subject to one amendment, fulfils the requirements of the 1993 Act. It complies with standard leasehold enfranchisement practice and is completely unexceptional and clear. The proposed draft of the respondent would require significant amendment before it would be in the required form.

88. The tribunal therefore approve the applicant's draft of new lease, to be found at pages 82-88 of the applicant's hearing bundle, once the agreed premium has been inserted, and clause 2.1 amended so that the lease is let with "limited title guarantee" not "full title guarantee', as required by section 57(8) (b) which provides**;**

> *(8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—*
>
> *(b)those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an*

underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);

and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

Landlord's statutory costs

89. As the part of the enfranchisement process, the landlord will be entitled to his statutory costs under section 60 of the 1993 Act; and if they are not agreed between the parties, the tribunal has jurisdiction to determine the amount of any costs payable, pursuant to section 91(2)(d) of the Act.

Name: Judge Pittaway **Date:** 31 October 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation relating to the Service Charge Application

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 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).