FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HN/LSC/2019/0126
Property	:	84c Poole Road, Bournemouth, Dorset, BH4 9DZ
Applicant	:	Phyllis Betty Chapman
Representative	:	Lorraine Vass
Respondent	:	84/86 Poole Road Property Limited
Representative	:	
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge- section 27 of the Landlord and Tenant Act 1985**
Tribunal Member(s)	:	Judge J Dobson
Date of Decision	:	14th September 2020 **On the papers**

DECISION

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Summary of the Decisions of the Tribunal

1. The Tribunal determines that £1207.45 is payable overall in respect of the service charge items in dispute in this application, of the £2357.16 demanded by the Respondent in respect of those items. .

2. The Tribunal determines in respect of costs that any costs of the Respondent in connection with the proceedings are not to be included in the amount of any service charges payable by the tenant or in any administration charge in respect of litigation costs.

3. The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

Application

4. The Applicant made an application to the Tribunal, for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of certain service charges payable by the Applicant in respect of the service charge years 2014 to 2019.

Directions made/ history of the case

5. On 13th December 2019, a Directions Order was made by Judge Whitney. That identified that the matters to be determined included whether sums billed to the Applicant and claimed are due and payable in accordance with the terms of her lease, whether external decorations were completed to a reasonable standard and whether the amount billed for electricity is reasonable. The Directions Order thereafter listed the steps to be taken by the parties in preparation for the determination of the dispute, including the preparation of a bundle by the Applicant.

6. The further Directions additionally advised that a Tribunal Judge would decide the application by way of paper determination and without a hearing. Neither party has subsequently requested an oral hearing. The Applicant's representative provided a bundle.

7. The Tribunal considered the matter for the purpose of the paper determination in May 2020 but, on doing so, noted that the wrong Respondent appeared to have been named. Consequently, further directions were given to enable the proceedings to be brought against the correct Respondent and for that Respondent to reply to the application. The identity of the Respondent has subsequently been amended and a response has been served by the correct Respondent and provided to the Tribunal. The Applicant has provided a short supplemental bundle electronically thereafter.

8. The Tribunal has accordingly proceeded to determine the application by way of a paper determination on the evidence now provided by the parties, including but not limited to considering the issues previously identified. The Tribunal has done so on the footing that the case advanced by the original respondent and director of the Respondent is maintained except where specifically altered by the subsequent response. This is the decision made following that paper determination.

The background

9. The property which is the subject of this application is a four- bedroom first floor flat ("the Flat"), being one of four flats in relation to which leases were granted by National Westminster Bank Plc ("the Bank"), although one of what are now seven flats in the building ("the Building"), the others being 2 one- bedroom flats and 4 studio flats, and situated above the Bank, which occupies the ground floor and basement.

10. The Applicant holds a long lease of the Flat. The Applicant obtained title under a lease dated 20th December 2002 ("the 2002 Lease") granted by National Westminster Bank Plc for a term of 125 years. That was varied by a Deed of Variation which is also dated as 20th December 2002 ("the 2002 Deed"). The 125- year period was not altered. The Tribunal presumes that both of those dates are correct and so both the 2002 Lease and the variation by the 2002 Deed were entered into on the same date, although at first blush that appears odd. However, neither party has queried the dates shown on the documents.

11. The term "the Lease" as used below refers to both the 2002 Lease and the 2002 Deed collectively and reference to the terms of the Lease refers to the terms of 2002 Lease as varied by the 2002 Deed.

12. The title number of the Applicant's title is not apparent but nothing for determination turns on it. The freehold title is registered at HM Land Registry under title number DT332492. That is now held by 84/86 Poole Road Management Limited ("PRML"), the freehold having been sold by the Bank. The lease granted to the Bank of the lower floors 28th July 2005 is registered as DT333398.

13. In addition, in May 2011, an overriding lease was granted by the freeholder to Poole Road Property Limited ("PRPL") of the first floor and above of the Building, for a term of 125 years from 23rd June 2010, therefore ending after the end of the Lease. PRPL thereby took the benefit of the covenants in relation to service charges and similarly the obligations.

14. The Lease requires the Respondent freeholder (described in the Lease as the "landlord") to provide services and the Applicant leaseholder to contribute towards the costs by way of a variable service charge. The provisions in relation to payment of service charges by the Applicant were changed quite significantly from those in the 2002 Lease by the 2002 Deed in their wording, although without change to the practical

effect. The specific provisions of the Lease are referred to below, where appropriate. In practice, the party required to provide services and the relevant recipient of the Applicant's contributions became the over-riding lessee, PRPL, the Respondent.

15. The Applicant has not disputed the entitlement of the Respondent to recover service charges from the Applicant generally and has not raised any issues about the validity of the demands. Her application instead challenges the recoverability under the terms of the Lease and/or the reasonableness of the various items in dispute.

16. Neither party requested an inspection of the Property or the Building and its curtilage more generally and the Tribunal did not consider that one was necessary, or that it would have been proportionate.

17. **The Law**

18. The relevant statute law is set out in the Appendix to this decision.

The Lease

19. The 2002 Lease states:

"Service Percentage 17% subject to variation as provided in Schedule 4.

1.1.1 "Building" includes any landlord's fixtures and fittings in the Building and any car park refuse area or pavement within the curtilage of the Building"

1.1.2 "Common Parts" means the entrance halls staircases passages pavements roadways car park (if any) and other parts of the Building (not forming part of the Property) and within its curtilage from time to time provided by the Landlord for the Tenant's use and/or for common use and/or enjoyment by or for the benefit of the occupiers of the Building……."

1.1.5 "Property"
Includes:
(a) the plaster paint paper and other decorative finishes applied to the internal faces of any walls surrounding the Property which are external walls of the Building or are load- bearing walls but not any other part of such walls
(b) ……….

1.1.7 "Services" means air water soil electricity oil gas telephone telegraphic and other services and supplies of whatsoever nature

1.1.8 "Structure" means:
…………
(c) The entirety of all external walls of the Building………

20. Clauses related to what the 2002 Lease refers to as "the Service Rent" are varied by the 2002 Deed. That adds the following:

3.1.1 There shall be substituted for the existing Clause 1.1.6 [which defined Service Rent in the 2002 Lease] the following:

"Retained Parts" Means

The Common Parts (including (but not by way of limitation) any areas used or constructed or adapted for use or intended for use for the installation of Plant) and all other parts of the Building which from time to time are neither let on an occupational lease nor so constructed or adapted as to be capable of being so let and where the context so admits references to all walls floors and ceiling of and all doors and windows and door and window frames and other things in or on the Retained Parts (but excluding any such items or any parts of such items whose maintenance and repair is the exclusive responsibility of the Tenant or of any other occupier of the Building)........"

3.1.3 There shall be substituted for the existing clause 3.3 the following:

"To pay upon receipt of written demand, 17% of the sums paid by the Landlord in performing any one or more of its obligations set out in Clause 4.5......"

3.1.5 There shall be substituted for the existing Clause 4.5 the following:

"Subject to Clause 5.3 [the contents of which are not relevant to this application] to use reasonable endeavours to maintain and repair:

4.5.1 the Retained Parts and the Structure.......

4.5.4 all windows and window-frames in any walls surrounding the Property (but excluding if applicable the paint and decorative finishes applied to the internal faces of the same.......)"

Consideration of the service charges in dispute

21. The Applicant challenges the recoverability and reasonableness of various items. The Tribunal considers the matters raised by the Applicant's representative in the application and remaining in dispute below, taking each year in turn. Where the relevant issues as to a particular item are dealt within a given year, they are not dealt with again in full the following year.

i) 2014

22. The Applicant disputes only one item in respect of 2014, namely her share of the cost of external decorating.

23. The Applicant states that 2 or 3 weeks after her bedroom window was painted, the paint lifted off and that following her telephone call to the management company a man came over with a pot of glue and glued the paint back down. The Applicant apparently withheld £203.58.

24. The Respondent disputes that decoration was undertaken to the timber to what is described by it as the "void area" in the middle of the Building, which is said to include the Applicant's bedroom window. Hence, in

effect, the Respondent asserts that the events described by the Applicant could not have happened.

25. There is no dispute that the Respondent is responsible for external decoration and entitled to recover the cost of that as service charges, subject to the work being undertaken and to reasonableness of the charges.

26. Decision

27. The Tribunal determines that the service charge is reasonable and is recoverable in full in the sum of £203.58.

Reasons for Decision

28. For the avoidance of doubt, the Tribunal has considered whether the dispute as to fact necessitates the listing of an oral hearing to determine the question. However, in this instance, the point is a small one, it is the Respondent's case which is not accepted but without any detrimental effect on the Respondent in the event and so the Tribunal considers it not necessary, still less proportionate, to list an oral hearing as a consequence of the particular factual dispute.

29. The Tribunal prefers the evidence of the Applicant that there was redecoration to the window in question. Whilst the Tribunal notes that the evidence of Applicant and her representative is not accepted, that evidence is cogent and persuasive on this point.

30. The Respondent is unlikely through any officer or employee to have first- hand knowledge and so the Tribunal considers that the high likelihood is that the Applicant is correct. The Tribunal considers that the Applicant's evidence includes a coherent reason (albeit not in the event a valid one, as explained below) for the Applicant not making payment of the service charge for the decoration.

31. The Tribunal accordingly finds as a fact that that the window frame was redecorated.

32. There is no photographic evidence of the condition of the paint at the time of it lifting off and an inspection of the property in 2020 would plainly not have assisted. The Applicant has not identified how large an area of paint is referred to by her, how badly it lifted off and what, if anything, detrimental has happened since the lifting paint was glued down. The Tribunal is entitled to infer that there has been nothing detrimental in the absence of evidence to the contrary.

33. Whilst paint lifting off, of however large or small an area, is unsatisfactory and indicative of inadequacy of the original decoration work, it is notable that there is no suggestion that the gluing down of the paint was not effective and that the paint has lifted off again. Neither is there any suggestion that any other difficulty has been caused to the

Building generally or the Flat particularly by the condition of the paintwork. Therefore overall, the effect of the work is satisfactory.

34. The reason for the Applicant not paying being a coherent one does not mean that the reason is also a good one and that the service charge is not payable. The issue which arose with an area of paint coming away and being glued down, is not a sufficient reason for the Applicant to fail to pay the service charge at all, even putting the Applicant's case at its highest. There is no evidence that the overall redecoration work, including as one aspect of that the gluing down of the particular area of paint, was not adequate in the absence of any evidence of any subsequent impact.

35. The Applicant has failed to demonstrate that it was unreasonable in part or all for the Respondent to charge the amount invoiced by the decorating company and paid as a service charge. The charge is recoverable and reasonable.

36. For completeness, the Tribunal notes that the statement of account provided by the Respondent and included in the supplemental bundle only gives a balance owing of £3.58 brought forward from 2014, not the other £200 that the Applicant states was withheld. However, nothing turns on that in respect of the question for determination by the Tribunal in the circumstances which is the amount payable for the item and not the state of the account .

ii) **2015**

37. The only item in dispute in 2015 is the amount of the cost of electricity, although the same issue also arises in subsequent years. There is no dispute as to as to the ability of the Respondent to recover electricity costs for the communal areas in principle and hence the dispute is as to the reasonableness of the level of charges. The Applicant appears to accept that the electricity costs have been incurred by the Respondent. The Applicant's contribution through her service charge to the cost of the electricity is said to be £80.24- being the total of £23.71, £24.87 and £31.66- in effect £6.69 per month.

38. The Applicant states in the application that back in 2009 and 2010 she paid approximately £46 per year and either the cost had risen by 240% by 2015 as compared to the cost in the previous years or the percentage charged to her has increased. The Applicant refers to a total cost for her contributions of 17% from April 2015 to December 2017 inclusive as £315.64 or £9.56 per month. She suggests that the creation of the over-riding lease may be relevant, although does not set out any clear case as to why. She does not advance a precise basis for objection or provide any figure said to be reasonable. The Applicant's representative in her statement says that an explanation for the increase has been requested but has not been forthcoming. The charge for February 2018 to January 2019, is said to have been, at 17%, £71.96 demanded in 2019, amounting to £6.00 per month (rounded).

39. The Respondent's case is that the electricity costs are those which the electricity supplier charged and that those costs were paid and then the sums paid were recovered, no more no less. Various electricity bills and invoices from the Respondent in relation to electricity charged as service charges are enclosed in the bundle. The Respondent says that the supplier is one of the cheapest and that the electricity powers the lights, fire alarms and a smoke extraction fan to the communal hallways. As to whether the Respondent position is that charges have or have not increased by 240% as compared to previous years and, if so, any reason for that are not set out. The Respondent states that it changed the tariff from a commercial one to a residential one in 2018, which was cheaper. The Respondent suggests that the supplier resisted the change but no other reason is advanced by the Respondent as to why that change was not dealt with earlier.

Decision

40. The Tribunal determines that a reduced sum of £72 is reasonable.

Reasons for Decision

41. There has been no apparent change to the Building between 2015 and 2018. The communal areas have at all times been communal areas and the internal ones for which the electricity costs are said to have been incurred have at all times served the various residential flats. As the tariff was able to be a residential one in 2018, it not possible to discern why it could not have been a residential one in earlier years. The Tribunal finds that no adequate reason has been provided by the Respondent.

42. It is apparent that the residential tariff is less expensive**.** That is referred to by the Applicant in her case as to the reduction in the bills from 2018 and is plainly the reason for the change made by the Respondent. The Tribunal finds that the tariff should have been a residential one in 2014 and onward and that the reasonable level of charges is the cost of usage at residential rates.

43. Utility prices are want to vary and can move both up and down for a variety of reasons. There is no clear basis upon which to assume that the charges are likely to have increased by the level of the retail price index (RPI) each year, whether in terms of standing charges or unit charges for usage. 2009 and 2010 are too historic to assist. There are also copies of the invoices from the Respondent to the Applicant indicating the amount of service charges for electricity usage but not copies of the invoices to the Respondent from the supplier. The quantity of units used and any standing or other charges are not apparent.

44. The best that can done on the evidence available is to assume that the same or a very similar residential unit usage rate applied for 2015 as it did for previous years, accepting that may produce a reduction a little

too high or a little too low. Similarly, in relation to standing charges and to the amount of electricity used. However, all of that is where the reduction applied from the apparently commercial rate previously charged by the utility company is only a percentage of the overall figure for charges to the Applicant for 2015, namely £80.24 in total, and any more accurate reduction would be likely to produce a no more than nominal variation in the figures.

45. On the limited available evidence, the Tribunal finds that the reasonable service charge for what should have been residential rate usage and applying the monthly rate for 2018 is £72.00.

iii) 2016

46. The Applicant seeks a determination in relation to two aspects.

a) Car Park

47. The new element of dispute is the cost of repairs to the car park to the rear of the Building. In her application, the Applicant quotes a portion of the Lease and asserts that the car park is rented to the Bank. The same points are made in the statement of the Applicant's representative, asserting that the car park is not a common part. The Applicant does not challenge the level of expenditure by the Respondent or the specific level of the service charges in respect of the car park. The dispute is as to whether the service charge is payable at all.

48. The Respondent's case is that the Bank has the right to park eleven cars on the car park (although does not say the total number of spaces available). The Respondent also states that the car park allows pedestrian access and that the Applicant uses the rear access to the Building from the car park every day. The Respondent additionally states that the car park contains the wheelie bins for all the flats.

49. No information is provided by the Respondent as to the basis for the Bank having the use of eleven spaces. The Respondent does say that the Applicant parks her car in the car park, although that she is not entitled to do so, the Respondent asserting that the lessees having no such right.

50. The Applicant in her response to the Respondent's case admits that she parks in the car park and has always done so, stating that permission to do so was given to her by the Bank. The Applicant denies that the car park is a common part because the lessees only have access across the car park for the refuse and recycling bins. No comment is made in response to the Respondent's assertion that the Applicant uses the rear access from the car park every day.

Decision

51. The service charge of £211.47 in relation to the repair to the car park is reasonable and recoverable.

Reasons for decision

52. Clause 1.1.2 of the 2002 Lease clearly states that if there is a car park, which there is, it forms part of the common parts.

53. The lease of the ground floor and basement to the Bank is just that. The Lease contains no mention of a lease of the car park. The Applicant has provided no evidence to support her contention that the car park is rented out to bank.

54. The reference by the Respondent to the Bank having the use of eleven parking spaces does not obviously fit with the documentation in the bundle and it is unclear on what basis the Bank has that use. The use of what seems to be most but not all of the spaces, on the basis of use of one by the Applicant, is at least not wholly inconsistent with the Applicant's contention of the car park being rented to the Bank. However, the practical, if not legal, ability of the Applicant to park in the car park and the use of it as access run contrary to the car park being rented out to the Bank in its entirety, unless specific rights of access and use by the residents are preserved in any agreement, of which there is no evidence. Taking such evidence as there is in total, the Tribunal finds insufficient evidence that the car park is rented to the Bank.

55. The Tribunal notes in that regard that the Applicant states that she was given permission to use a parking space by the Bank. No specific evidence is offered as to when that occurred. The Tribunal notes that the Bank owned the Building and its curtilage at the time of the Applicant's lease in 2002, granting the Lease to the Applicant, and continued to own until 2005. Given the above and the statement by the Applicant that she has "always" parked her car in the car park, the Tribunal finds that permission was granted to the Applicant by the Bank when it owned the Building and when it was able to grant that permission as owner.

56. The Tribunal finds that the car park is clearly a Common Part as defined in the 2002 Lease and a Retained Part as defined in the 2002 Deed. Accordingly, it falls within the requirement for the Applicant to pay, upon receipt of written demand, 17% of the sums paid by the Landlord in performing its obligations set out in Clause 4.5 to use reasonable endeavours to maintain and repair such Common Parts.

57. The service charge in respect of the car park is recoverable and is accepted by the Tribunal as reasonable, no challenge having been brought to that latter element and so there being no dispute about reasonableness for the Tribunal to determine.

b) Electricity

58. The other element is the electricity charges again, where in relation to the electricity element of the service charges for 2016, the parties' cases are the same as for 2015.

59. In respect of 2016, the Applicant states that the service charges charged to her for electricity amounted to £113.79- £26.58, £58.04, and £29.18, each of those three figures being the total of the Applicant's contribution to charges for electricity shown on a given invoice.

Decision

60. The Tribunal determines that a reduced sum of £95 is reasonable.

Reasons for decision

61. The Tribunal adopts the same reasoning to that for 2015, namely in essence that on the limited available evidence the unit rate and standing charges ought to have been at the residential rate and that rate would have been likely to be the same as or very similar to that in 2018.

62. Nevertheless, the charges increased significantly from 2015 to 2016 and so, in the absence of other explanation, it is more likely than not that there was at least some increase in usage. Hence the service charges for electricity at the residential rate would be greater than those for 2015, albeit that there is a lack of evidence that they should be fully proportionate to the figures for the two years at the commercial rate.

63. A service charge figure between £90 and £100 appears the most likely to be have been the correct one for the usage during the year and standing charges at a residential rate. Doing the best that can be done on the evidence, £95 appears accurate or as to close to accurate as practicable.

iv) 2017

64. The Applicant seeks a determination in relation to the same two elements as for 2016. The case in relation to electricity is the same as for previous years and the case in relation to the car park is the same as for 2017.

65. The Respondent's case is also the same as before.

Decision

66. The decision is the same as that for 2016, namely that the service charge of £158.83 in respect of the car park is recoverable and reasonable.

67. The charge for electricity costs is recoverable but in the reduced sum of £95.00.

Reasons for decision

68. The reasons for the decision are the same as those given in relation to 2016 and so are not repeated.

69. In terms of the calculation of the electricity charges, the sums charged on invoices referring to service charges for electricity are £19.27, £56.09 and £36.05, thereby totalling £111.41, although the Applicant refers to a total of £121.50. Whichever of those figures is correct, that is almost the same as the charges for 2016 and hence the reasonable level of service charges if the rate had been residential rather than commercial is the same or very similar.

70. Therefore, doing the best that can be done on the available evidence, the level of service charge reasonable for 2017 is the same figure as 2016, namely £95.00.

v) 2018

71. The Applicant brings a rather wider challenge to service charges in 2018 and in relation to items in an invoice sent by the Respondent. In addition to electricity costs, the challenge is to charges for repairs and maintenance, for fire safety, for electrical safety, for communal cleaning, and for book-keeping.

72. However, there are two specific bases advanced for that challenge. The first is whether the costs are "legitimate" and the second is as to whether the correct percentage is being charged. In respect of the percentage, the Applicant asserts, when referring to charges for 2019, that a spreadsheet produced from the representative of a management company revealed that charges have been 32% and not 17%, although the Applicant has not challenged any charges prior to 2018 on such a basis. Save in relation to the wheelie bin referred to below, no specific basis for any lack of legitimacy has been identified.

73. A third comment is made, treated in this Decision as a third limb of challenge, it appearing that was the Applicant's intention. That is that the 17% charged to the Applicant is £1194.25, (hence the total expenditure on the items would amount to £7025), whereas expenditure has only been evidenced of £2182.40, such that the Applicant's share of that much lower sum should be considerably less.

74. The Respondent has conceded that there should be no charge for work to change a light bulb at a different property and that there should be no charge specifically. There is a copy of an invoice with that item of work removed, although that has not in practice led to any change to the amount of the relevant invoice to the Respondent, or consequently the sum charged to the Applicant. However, the integrity of the amended invoice has not been challenged.

75. The Respondent also accepts that a charge of £55 for a replacement wheelie bin for one of the other flats shown on an invoice issued 20th November 2018 by the local council was incorrectly charged as service charges and that the Applicant is not liable for her share (17%) of that sum ie £9.35.

76. More generally, the Respondent accepts in its statement of case dated 15th June 2020 that the Applicant was being charged "more than 17% for some elements in the residential only parts of the building". The Respondent goes on to say it has "finally managed to get the Commercial tenants (Nat West Bank) to contribute their 47%.

77. As a consequence, the Respondent states that it is issuing a credit note for £869.58, which it states brings the amount owed by the Applicant to £1422.34. The Respondent states that the same approach will be taken in respect of subsequent years. The credit note provided in the supplemental bundle relates to 3 invoices, dated 21st February 2019, 5th September 2019 and 28th October 2019 respectively. The invoice relevant to 2018 service charges is that dated 21st February 2019.

78. In relation to the lack of evidence of expenditure, the Respondent's case amounts to an assertion that it is too difficult to provide more evidence than has been provided.

79. The Applicant's representative responded to the statement of case of the Respondent noting the concession as to the percentage charged and identifying discrepancies between amounts claimed and the amount supported by paperwork.

<u>Decision</u>

80. The sum of £361.67 is payable in respect of service charges for 2018.

<u>Reasons for decision</u>

81. The amount owed by the Applicant to the Respondent is not a matter for the Tribunal in response to this application. The question to be answered by the Tribunal is as to the service charge payable.

82. It is less than clear whether the Respondent's concession relates to 2018 or also to earlier years of service charge. However, 2018 is the only year for which a challenge is brought based on the percentage of the overall costs incurred by the Respondent charged to the Applicant. The questions which the Tribunal was asked to determine for earlier years were the more specific ones identified and determined above. No services charges for years prior to 2018 have been challenged on the basis of the percentage charged to the Applicant.

83. It is apparent that the Respondent was charged the full sums and 47% of some or all items was claimable from the Bank. It has sensibly been accepted by the Respondent that where it charged the Applicant more than 17%, it was not entitled to do so. The Tribunal accordingly reaches its decision in respect of this element of challenge on that footing.

84. The Applicant is correct to say that there has by the Respondent been production of evidence of expenditure for only a percentage of the

charge levied and an assertion that it is too difficult to provide more. That is simply not satisfactory in this case, nor is it acceptable management of the Building more generally. The Respondent is obliged to maintain proper records and the lessees are entitled to know that which they are required to pay for. The documents are or should be within the knowledge and the control of the Respondent. The Applicant has raised an issue and the Respondent should address it, with the appropriate evidence.

85. In any event, the Tribunal cannot find disputed elements of cost charged as service charge to be payable where the expenditure cannot be demonstrated to have been incurred and for which there is nothing to demonstrate the expenditure to have been reasonable.

86. The Tribunal finds that the most that the Respondent can recover by way of service charges on the evidence presented is 17% of the expenditure accepted as evidenced, i.e. £2182.49, namely £371.02.

87. That assumes that the costs for which service charges have been demanded are all for items for which service charges are recoverable- "legitimate" as the Applicant terms it. It must in any event be reduced to provide for the credit accepted as appropriate in relation to a recycling bin, i.e. £9.35. The charge does not require further reduction in respect of the light bulb, there being insufficient evidence of an additional charge having been made to the Applicant to render such a reduction appropriate.

88. The Applicant has not advanced the argument about legitimacy sufficient for the Respondent to be compelled to respond to it and for any inadequacy in response to assist the Applicant. The Tribunal makes no finding that any of the charges, other than in respect of the wheelie bin, lacked legitimacy, in the absence of the Applicant having advanced any sufficient case.

vi) 2019

89. The Applicant has applied for a determination of all service charges yet to be billed- at least at the time of the application- by the Respondent, more particularly the legitimacy of the bills and the percentage being charged. The Applicant indicates that a management company has been instructed, as referred to above.

Decision

90. The Tribunal is unable to determine whether charges of which it has no details are payable and so reaches no determination.

Reason for decision

91. The Tribunal has no information on which to make any determination.

92. There is no estimate of charges provided, there is no reference to sums being demanded in advance and there are no copies of any invoices, albeit that there is an indication of the level of 3 specific ones from the credit applied to them. The percentage payable by the Applicant is provided for in the Lease and is dealt with above in respect of 2018 charges. Service charges must be rendered by the Respondent in accordance with the Lease: the willingness or otherwise of the Bank to contribute is not the question. However, the recoverability and reasonableness of any given items and any given level of charges demanded for 2019 is entirely unknown to the Tribunal.

93. The Applicant is able to apply in respect of 2019 service charges rendered by the Respondent separately if she wishes to do so. The Tribunal expresses the hope that upon the parties considering this Decision and its constituent determinations, the sums properly payable for 2019 service charges can be agreed- and can be varied from any amounts already demanded insofar as appropriate- and therefore further proceedings before this Tribunal can be avoided.

Applications in respect of costs and refund of fees

94. The Applicant stated in her application that she did wish to make an application that any costs incurred in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the tenant pursuant to section 20C of the Landlord and Tenant Act 1985. The Applicant further stated that she did wish to make an application, pursuant to Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. No application has been made by either the Applicant or the Respondent for an order for costs against a party who has conducted the proceedings in an unreasonable manner, pursuant to Rule 13 of the Tribunal Procedure Rules 2013.

95. The Tribunal has considered whether, or not, those applications should be granted in light of the determinations made in respect of the substantive challenges brought. Those determinations have neither been universally favourable to the Applicant or to the Respondent. The Applicant's success was modest for years prior to 2018 but rather more significant for 2018.

96. On balance, as the Applicant has achieved success in challenging whether, or not, service charges are payable and the Respondent has conceded having sought to charge the Applicant more than it was entitled to, the Tribunal finds it appropriate to grant the Applicant's applications pursuant to section 20C of the Landlord and Tenant Act 1985 and to Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

97. In addition, and for the same reasons, the Tribunal orders the Respondent to refund the £100 fee to the Applicant within 28 days.

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.