FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) AND IN THE COUNTY COURT SITTING AT 10 ALFRED PLACE

Case reference	:	**LON/00BJ/LSC/2021/0007** **F46YY789**
HMCTS code (paper, video, audio)	:	**V: CVPREMOTE**
Property	:	**21 Heathview Court, Parkside, London SW19 5NL**
Applicant/Defendant	:	**Mr G Harris and Dr A Gowan**
Representative	:	**N/A**
Respondent/Claimant	:	**Heathview Court Limited**
Representative	:	**Mr Craggs of Counsel instructed by Realty Law Solicitors**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge H Carr** **Mr Richard Waterhouse**
In the county court	:	**Judge H Carr (sitting as a judge of the County Court (District Judge level)**
Venue		**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**13th September 2021**

DECISION

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected 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 documents that I was referred to are in a bundle of 294 pages, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal determines £0 is payable by the Applicant in respect of the service charges and administration charges demanded in 2019 which were the subject of the application.

(2) The tribunal makes the determinations as set out under the various headings in this Decision

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(4) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

Summary of the decisions made by the Court

(5) No sum is payable under the lease.
(6) No interest is payable in relation to service charge demands.
(7) The claim is dismissed.

The application to the tribunal

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge year 2019. .

2. The application arises from county court proceedings issued on 9th December 2019 claiming £3189.09 for sums due under the Applicant's

lease. These were subsequently stayed for the applicants to fill an application.

3. The respondent subsequently sought to transfer the county court case to the tribunal. An order transferring the entirety of the claim was made by Deputy District Judge Rodger on 14th April 2021. The order stated that the contractual costs and late payment provisions were to be determined by the tribunal sitting as the County Court and the remaining element to be determined by the tribunal sitting as itself.

4. The tribunal hearing the matter was not aware at the time of the hearing that the claim had been transferred. No-one at the hearing had a copy of the order. However in the light of the determination of the application by the applicants, Judge Carr, sitting as a County Court judge made determinations on the contractual costs and late payment provisions.

The hearing

5. The applicants appeared in person at the hearing and the respondent was represented by Mr John Craggs of Counsel.

6. Also in attendance for the respondents were Ms Inma Gell from the respondent's managing agents, Diamond Managing Agents and Mr Denis Stubbenhagen a builder described as a trusted contractor by the managing agents.

The background

7. The property which is the subject of this application is a 1 bedroom flat in a three storey block built in 1991. The property is on the top floor of the flat. It has a guest WC and a bathroom.

8. The Applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The lease is a tripartite lease with the parties being the developer, (the estate owner of the freehold interest in the block), the lessee, (the applicant), and the Company (the respondent) which is the leaseholder of the common parts of the block.

9. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

10. The tribunal identified the relevant issues for determination as follows:

(i) The payability and/or reasonableness of service charges for 2019 relating to various costs incurred connected with investigations of the integrity of the roof, in particular

a. Does the lease allow for the costs to be demanded? If so

b. Have valid service charge/administration charge demands been served by the respondent? If so,

c. Are the specific sums demanded payable and reasonable?

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

The context and factual background

12. The applicants' property has been tenanted since 2003. The current tenant is Mr Daniel Wilson who has been the tenant since April 2018. The applicants employ a manager for the property, Mr Miles Black, whose duties include fault investigation, general maintenance, and decoration. He subcontracts where appropriate to specialist tradesmen and project manages their duties on behalf of Mr Harris.

13. There was an ongoing dispute between the applicants and the respondent about the alleged failure of the latter to prevent water ingress to the property. Mr Harris says that previous water ingress was so bad that it led to two previous tenants surrendering their tenancies. He has spent considerable sums redecorating the property on two separate occasions.

14. The applicants say that it took two months of reporting problems to Diamond Managing Agents in 2016 -17 by email and telephone before they investigated what turned out to be a problem with the building's roof. Works were subsequently carried out to the roof by the respondent. It was overhauled and repaired over a five-month period. The applicants redecorated the property after they were told that the roof works were completed. There was a further leak, and they were obligated to redecorate again.

15. The applicant took county court proceedings against Diamond Managing Agents for negligence in March 2019. The claim was dismissed in April 2019.

16. The immediate cause of the charges that have led to the application is an incident of water ingress from the applicants' property that happened in the middle of the night of 19th/20th February 2019.

17. Water was flooding from the applicants' property into the flat immediately below and the flat below that – flat 5. The ground floor flat is owned by Mr Murray Ross who is a director of the respondent. That flat, like the applicants' flat, is tenanted.

18. Ms Gell, in her role as managing agent of the building contacted a number of emergency services and investigations of the cause of the leak. It transpired that the cause of the leak was an overflowing cistern from the guest WC. She organised for the fire brigade to attend to disconnect the water and a plumber on emergency call out.

19. When the applicants were informed of the leak, which was not until late on 20th February, Mr Harris immediately contacted his tenant and Mr Black to investigate and repair any problems in his flat that were causing the leak, including contracting with a plumber if required.

20. Mr Harris says that despite the water supply being shut down almost immediately he continued to receive reports over the next few days from Ms Gell that water ingress was continuing into the ground floor flat.

21. At the same time Mr Harris thought there might be a recurrent problem with the roof because his tenant told him there was ongoing water damage to the walls and ceiling of the bedroom of the flat. The applicant was concerned that the problem which had caused him financial loss and inconvenience had not been properly resolved.

22. The tribunal heard evidence about the works done in connection with the overflowing cistern by the applicants which were criticised as ineffective by the respondent. The tribunal reaches no conclusion on those works, other than to note that the applicants did organise works to the toilet.

23. It is here that there is a dispute about the facts which led to this case coming before the tribunal. It is not surprising that there was some confusion and suspicion between the parties at this point. Mr Harris was very worried about recurrent water damage and consequent expense, Mr Ross was very worried about water ingress to his flat which was upsetting his tenant and Ms Gell was not only caught between these two lessees, one of whom was a director of the respondent and the other who had been a director previously, but she was also very worried about being sued by the applicant as there was a court hearing due in the next six weeks.

24. Ms Gell says that Mr Harris disputed the cause of the leak and that he told her to conduct checks on the roof even though a plumber had already

conducted a check and verified that the leak was not caused by problems with the roof

25. Mr Harris says that he did not dispute that the overflowing cistern was the cause of the leak. He was happy to accept that this was the cause. He says that he at this point asked Ms Gell to investigate the water stains to the bedroom of the property as a separate and unrelated matter.

26. The applicants emailed Ms Gell photographs showing water damage to the walls and ceiling of the property in response to a request from Ms Gell that they do so.

27. On 28th February 2021 Ms Gell emailed Mr Ross about what to do next. Her email includes the following. 'We may need to serve notice to access Guy's flat and carry out the repair on behalf of Heathview Court Ltd but if we do this, we may have other additional problems with him. I am waiting for the directors' approval so Luis can inspect the property and issue a report as otherwise Guy will find another reason to sue the management company or DMA about the roof and the leak as he believes the roof is causing the problems in his flat and he won't admit he is causing the problems himself.

28. Mr Ross replied two hours later. His email was as follows:

> This whole situation is becoming a joke. In my opinion, we need to do whatever it takes immediately to solve this problem. Firstly I propose informing Guy that we are getting Luis the surveyor to check the roof space fully to discount the fact that the leak is coming from the roof. If it's found as Denis confirmed that the leak is coming from his flat, then he will be responsible for paying for the Survey as well as all the cost of all necessary repairs and contractors call out fees. I don't see how we can serve notice to enter his flat until we have discounted what he believes is the source of the problem ie the roof space. You will need at least one other director to be in agreement with me of course so we can get Luis to attend ASAP as a matter of extreme urgency. We cannot allow a situation to continue where water may still be leaking from a property and the owner is trying to blame a source outside of his property. Until we definitely prove his flat is the source of the leak then we leave ourselves open to interpretation. This is what we need to establish by the correct means, which as Denis suggest, is to pay Luis to inspect the roof space fully and report back on what he finds.

29. No evidence was provided that Mr Harris was told about this nor that another director confirmed this course of action.

30. Mrs Gell then contracted for the roof survey which was carried out on 8th March 2019.

31. On 13th March 2019 Ms Gell sent Mr Harris the surveyors report on the state of the roof and informed him that she would send the the consultant's invoices for their settlement plus any other costs incurred as a result of the situation. Mr Harris replied on 14th March 2019 that the damage was done by an unforeseen leak from his flat and this was attended to with due speed and further ingress prevented. He also states that whilst he is pleased that the roof inspection was satisfactory it does not explain the damp in the walls both above and distant from any toilet.

32. By an email from Ms Gell dated 10th April 2019 the applicants were asked to pay for the extra expenses incurred. These expenses make up the majority of the costs that are the subject of this application.

33. The words of the email of 10th April 2019 are significant. The first paragraph read as follows:

> Please find attached invoices resulting from the leak in your property. I have added all the costs to your service charge account that is now overdue and the amount outstanding in te attached statement is payable within 14 days.

34. The attached invoices were as follows:

(i) An invoice from Amber Group for £288 which was the call out charge for the plumber on the night of the leak

(ii) An invoice from Diamond Managing agents for £330 for various administrative tasks following the leak and relating to the roof inspection work

(iii) An invoice from D.M Stubbenhagen for £648.00 for site attendance with the roofers and the plumbers

(iv) An invoice from Notting Hill Building Consultants for £630 in relation to carrying out a defects survey on behalf of the residents association company.

(v) An invoice from CPW Roofing for £144.00 for a roof inspection.

35. There was also a statement of account attached to the email. This showed the charges from the above invoices. It described the Amber Group charge as works to fix leak caused by flat 21.

36. The applicants did not pay the charges so the respondent consulted Realty Law who wrote a letter before action dated 11th September 2019 which asked for payment of a sum of £2,245.29. An arrears schedule was attached which included charges for interest, and legal costs and also included a summary of tenants rights and obligations for service charges and a summary of tenants' rights and obligations for administration charges. This was sent to the applicants' home address.

37. A further letter was sent by Realty Law on 20th September 2019 with an arrears schedule attached. On 27th September 2019 another letter before action was sent with an arrears schedule and notices of tenants rights and obligations relating to service and administration charges. This was sent to the property.

38. Proceedings were issued by Realty Law on behalf of the respondent in the county court but the claim was stayed for the applicant to file an application in the FTT.

39. The tribunal finds the account of Mr Harris credible and clear. His account is supported by the photographs he sent Ms Gell which show water damage in the bedroom which is unrelated to the leak from the bathroom.

40. It finds Ms Gell's evidence to be confused and incoherent. For instance, the email she sent Mr Ross on 28th February 2019 does not explain what was obstructing access to the applicants' property. The email of 13th March does not clearly say what invoices will be required for settlement which meant it was open to Mr Harris to interpret that email as referring to the costs of repairing the leaking WC cistern. His reply indicates that is how he interpreted her email.

41. When the tribunal asked Ms Gell what she thought the cause of the water stains to the applicants' flat was, she replied that they were the result of condensation. That is not a credible explanation for stains that are not in the same room as the leaking cistern and are at a higher rather than a lower height. The tribunal notes that Ms Gell did not herself inspect the property at any stage.

42. The tribunal considers that the water stains in the bedroom were probably caused by the room having bee decorated before the damp had fully dried out.

43. On this basis the tribunal makes the following findings of fact:

    (i) Mr Harris accepted that the cause of the leak was the overflowing WC cistern. He took steps to repair that leak.

(ii) As a separate matter Mr Harris asked if the water stains to the bedroom could be investigated.

(iii) Ms Gell informed Mr Ross that unless the roof was inspected the works to the toilet would not be completed.

(iv) At no time prior to the costs being incurred did Ms Gell inform Mr Harris that he was to be responsible for the costs of inspecting the roof.

Are the costs payable under the lease?

44. The starting point for the determination of the issues are the terms of the lease. Most relevant appear to be the provision for service charges and a provision for administrative charges to pay or contribute to repairs necessitated by a lessees' default.

45. The Service Charge is defined at clause 1.7 of the lease as follows:

> 'the Service Charge' means a sum equal to 4/102 (or each other fraction as may be determined pursuant to Part I of the Fourth Schedule) of the aggregate Annual Maintenance provision for the whole of the Block for each Maintenance Year (computed in accordance with Part II of the Fourth Schedule).

46. Part II of the Fourth Schedule at paragraph 2 provides that the annual maintenance provision shall consist of a sum comprising the likely expenditure to be incurred during the maintenance year for the purposes mentioned in the fifth schedule of the lease, plus an appropriate amount for a reserve and a reasonable sum to remunerate the Company for its administrative and management expenses in respect of the block.

47. Part II of the Fourth Schedule also provides for a maintenance adjustment to be calculated where the estimates or maintenance costs exceed or fall short of the actual expenditure in the maintenance year.

48. In addition the Fourth Schedule provides that there will be a certificate signed by the Company and purporting to show the amount of the annumal maintenance provision or the amount of the maintenance adjustment for any maintenance year and that shall be conclusive of the amount, and that the company shall arrange for accounts of the service charge in respect of each maintenance year to be prepared and shall spply to the Lessee a summary of such accounts.

49. The Fifth Schedule sets out the purposes for which the service charge is to be applied. This covers the

(i) decoration and repair of structure and maintenance of grounds,

(ii) decoration and repair of common parts,

(iii) payment of outgoings such as rates taxes etc relating to the entirely of the block or the curtilage or common parts and water costs and expenses,

(iv) Employment of staff,

(v) costs incurred in management

(vi) television aerial radio relay and internal telephone,

(vii) costs of enforcing covenants of other leases in favour of the company

(viii) insurance against fire etc

(ix) third party insurance

(x) payment of taxes,

(xi) costs of discontinuance

(xii) contributions to any joint expenditure incurred with the adjoining owner,

(xiii) other services and expenses – this covers all repairs to any other part of the block for which the company may be liable and to provide and supply such other services for the benefit of the lessee and the other tenants of flats in the block and to carry out such other repairs and such improvements works additions and to defray such other costs (including the modernization or replacement of plant and machinery) as the Company shall consider necessary to maintain the block as a block of good class residential flats or otherwise desirable in the general interest of the lessees.

50. Mr Craggs says that the costs incurred to investigate the condition of the roof fall squarely within the provisions of the Fifth Schedule. He says that the applicant had the sole benefit of these investigations and therefore it is not unreasonable to expect the applicants to pay those costs.

51. Mr Harris argues that the charges demanded as "service charges" (which he points out is the sole basis of the claim against the applicants) are no such thing. The charges are not aggregated maintenance provision for the whole block for the year 2019 and have not, as is defined in the lease, been divided into amounts payable by all leaseholders on pro-rata basis according to dwelling size as stipulated.

52. Ms Gell's statement refers to various other provisions under the lease, for instance paragraph 4 of the Third Schedule which sets out the lessees' responsibility to keep the property in good repair and condition and paragraph 16 of the Third Schedule which refers to the costs of preparation and service of a schedule of dilapidation

53. There is another clause under the lease that the tribunal was referred to. In the view of the tribunal this is an administrative charge. It is set out in paragraph 24 of the Third schedule of the lease which is headed Lessee's Covenants. It is headed 'to pay or contribute to repairs necessitated by lessee's default' and provides as follows:

> To repay to the Company all costs charges and expenses incurred by the Company in repairing renewing and reinstating any part of the block not hereby demised or any conduits laid in connection with the block so far as such repair renewal or reinstatement shall have been necessitated or contributed to by any act negligence or default off the lessee.

54. Mr Craggs says that this clause is relevant as the works carried out in inspecting the roof were ancillary to the works required to repair the damage caused by the flood from the WC.

55. Ms Gell refers to another administrative charge at paragraph 2(b) of the third schedule which refers to the payment of payment of legal costs.

The decision of the tribunal

56. The tribunal determines that the costs incurred were not service charges under the lease.

The reasons for the decision of the tribunal

57. The tribunal determines that the only service charges that can be levied under the lease are ones that are borne collectively by the lessees in the proportions set out in the lease and demanded in the way that is required by the lease.

58. This means that when Ms Gell organised the inspection of the roof and incurred costs if those costs were service charges then they could only be incurred on behalf of all of the lessees and could not be incurred in such a way that they would only be borne by the applicants. Any belief that costs could be incurred under the service charge and then be paid by the applicants solely is mistaken.

59. It would be illogical to understand what happened in this case in any other way. It is not possible to have a conditional outcome as Mr Ross proposed. Either the inspection was for the benefit of everyone, regardless of the outcome or it could not be carried out under the terms of the lease and Mr Harris should have been asked to carry out his own inspection. The fact that the inspection of the roof coincided with a leak from the bathroom does not change the situation.

60. There is a possibility that the costs may fall within the category of administration charges under the Third schedule of the lease. Whilst the tribunal does not consider the clause relating to the payability of costs in preparing and serving a dilapidations schedule relevant as no such schedule was prepared, and it does not consider that paragraph 4 of the Third Schedule is relevant as these proceedings are not proceedings for breach of the lease, it will consider the other clauses referred to when it considers the reasonableness and payability of the specific charges demanded. However the tribunal does not accept Mr Craggs' argument that the paragraph 24 of the Third Schedule covers works that are ancillary to works covered by the paragraph. It determines that only charges incurred for works specifically covered by the paragraph are payable under the lease.

Were valid demands served under the lease?

61. Ms Gell told the tribunal that she simply sent the relevant invoices to the applicants. She did not send the relevant statement of rights and obligations. The tribunal therefore raised the issue of whether there were valid demands served under the lease.

62. In submissions on the issue provided subsequent to the hearing Mr Craggs argued that because the letter before action attached the relevant statement of rights and obligations for both service charges and administration charges this letter constituted a valid demand for the charges in dispute.

63. Mr Craggs provided authority for this - *Brent LBC v Shulem Association Ltd [2011] EWHC 1663 (Ch)*. At paragraph 45 of the decision Mr Craggs points out that '*the court must not lose sight of the point that the standard of reference to be applied is that of a reasonable recipient of the letter exercising his common sense in the relevant context. A demand can be valid even if it lacks absolute clarity'.*

64. He therefore argues that in this case the amounts specified were correctly specified and the sums were incurred by the Respondent. The letter was also sent with the accompanying rights and obligations required for invoicing. Therefore these amounts were properly demanded via the letters before action which contained all the relevant constituent parts of a valid service charge demand.

65. Mr Craggs also referred the tribunal to *Tingdene Holiday Parks Ltd v Cox, 2011 WL 2748247* (2011) where it was held that even though their first demands for payment did not comply with *S.21(B) Landlord and Tenant Act 1985*, the issuing of subsequent demands that are accompanied with a summary of the rights and obligations of tenants of dwellings in relation to service charges are valid demands.

66. The applicants made no submissions on the validity of the demands.

The decision of the tribunal

67. The tribunal determines that the demands were not valid service charge demands.

68. The tribunal also determines that the demands were not valid administration charge demands.

The reasons for the decision of the tribunal

69. The demands relate to items that are administration charges and not service charges. The lease specifies that service charges are demanded following a procedure for calculation and certification. The demands did not comply with these requirements. For both these reasons the demands are not valid as service charge demands.

70. The question remains as to whether the demands are valid demands for the purposes of administration charges. *Brent LBC v Shulem* is a case concerned with Section 20B of the Landlord and Tenant Act 1985 and the tribunal does not think that it is helpful in determining whether a letter before action with statutory rights attached is a valid administration charge demand for the purposes of Paragraph of the Commonhold and Leasehold Reform Act.

71. *Tingdene Holiday Parks Ltd v Cox, 2011* is more useful as it does refer to s.21B. It reminds the tribunal that 'The purpose is obvious: to ensure that the tenant, when he receives his demand, has clearly before him a statement of the rights and obligations that the Regulations set out (para 14). Of course the relevant section for administration charges is : but the purpose is the same. The explanatory note to the regulations say that the purpose

72. The tribunal does not consider that the letters before action which refer to outstanding service charge demands to which are attached summaries of rights and obligations for service charges and for administration charges is sufficient for the purpose of the regulations because those letters before action with their attachments do not provide clarity about the relevant rights and obligations. To suggest that they provide clarity is stretching the meaning of the section. It is not persuasive to argue that the applicants would have been clear that the charges were administration charges simply because a statement of rights and obligations was attached when all the correspondence and the attachments referred to service charges and there was also a statement of rights and obligations relating to service charge demands. In the tribunal's view an administration charge demand should be sufficiently clear that at the very least a tenant knows to ask what clause of the lease is the administration charge being demanded under. It was not clear in this instance.

73. The result of this determination is that the costs demanded are not payable.

74. The tribunal may be wrong on this determination. It therefore has determined the final issue on the basis that the administration charge demands were valid.

The reasonableness and payability of specific costs incurred

75. Having determined that the charges are not service charges but potentially administration charges and in the event that the tribunal os wrong about the validity of the demands, it now turns its attention to whether the specific charges demanded are payable as administration charges under the lease.

76. The first relevant clause is paragraph 24 of the Third Schedule – To repay to the Company all costs charges and expenses incurred by the Company in repairing renewing and reinstating any part of the block not hereby demised or any conduits laid in connection with the block so far as such repair renewal or reinstatement shall have been necessitated or contributed to by any act of negligence or default off the lessee.

77. The second relevant clause is paragraph 2b of the Third Schedule Clause - pay to the Company or Developer (as appropriate) on a full indemnity basis all costs and expenses incurred by the Company or Developer of the Company's or Developer's Solicitors in connection with any proceedings taken against the lessee to recover any rents Service Charge Maintenance Adjustment or other monies payable by the lessee under the terms of this lease.

Charge of £268

78. The applicant seeks evidence that this sum is reasonable and payable.

79. The respondent says that £268 is the remaining service charge balance after payments from Mr Harris have been allocated. This was the explanation on the Scott Schedule served on the applicant following the directions from the tribunal. It was also the explanation on the county court particulars of claim.

80. Ms Gell explained that payments to the service charge account were credited as they were paid rather than applied to specific items demanded. This was how the debit sum was arrived at.

81. Mr Harris asked Ms Gell whether he was in arrears on his service charges. She agreed that he was not and that any discrepancy in the accounts was as a result of the charge for the lease extension.

The tribunal's decision

82. The tribunal determines that this amount is not payable under the lease

Reasons for the tribunal's decision

83. It appears to the tribunal that any deficit on the service charge account was due to a charge of £450 for the lease extension. Otherwise the service charge account was not in deficit. Ms Gell could provide no explanation for the deficit when it was clear from the account that all maintenance charges had been paid on time and in full.

84. The tribunal considers from looking at the various invoices that the charge related to the call out charge of the plumber on the night of the leak albeit reduced by £20.

85. However this explanation was not provided to the applicants on the Scott Schedule or in the county court particulars of claim or even at the tribunal until the tribunal itself suggested that this was where the amount came from. The claim is therefore not reasonable and payable.

86. It appears to the tribunal that the amount may well have fallen under paragraph 24 of the Third Schedule but this was never put to the applicants and therefore they were not able to argue in response for instance that the leak was not as a result of negligence or default nor were they able to argue that it was covered by the insurance policy of the block, both of which appear to the tribunal to be tenable arguments in relation to the payability and reasonableness of the charge.

Charges for £630 - roof inspection surveyor invoice £144 roof inspection surveyor invoice £648 builders invoice

87. The applicant seeks evidence that these sums are reasonable and payable under the lease,

88. The respondent says that the roof inspection work was carried out at the request of Mr Harris. He refused to accept that his own toilet was the cause of his leak and requested a roof investigation.

89. The applicant says that the works were carried out to investigate the recurrent suspected leakage form the roof after major works. The inspection was carried out to the building not to the flat and the inspection was ordered by the managing agents after seeing requested photographs of damage to the ceiling and walls of the flat.

The tribunal's decision

90. The tribunal determines that nothing is payable in respect of the three invoices relating to the roof inspection.

Reasons for the tribunal's decision

91. The tribunal has found as a fact that the applicants accepted that the toilet was the cause of the leak and that the roof investigation was a separate issue.

92. As the tribunal has already made clear Ms Gell was mistaken in her understanding of the terms of the lease. She was not able to issue instructions for those works to be paid for by the applicants if they proved not to be necessary. She was only able to instruct for them to be carried out if they were to be paid for collectively by the lessees or if they fell within the remit of paragraph 24 of the Third Schedule.

93. The tribunal determines that the various charges for the roof inspection are not chargeable under paragraph 24 of the Third Schedule to the lease. That clause relates only to works which have been necessitated or contributed to by any act of negligence or default off the lessee. The various costs were not charged because of works necessitated or

contributed by any act of negligence or default of the applicants. They were works arising from Ms Gell authorising the surveyor the roofer and the builder to check that there was no water ingress from the roof.

94. The tribunal does not accept that the clause covers works which are ancillary to works which may be authorised under this clause. Even if the tribunal is wrong on that, there is no evidence that the works were ancillary. The works may have coincided in time but they were separate matters.

Charge item - £330 for managing agents administration of the works

95. The applicant seeks evidence that this sum is reasonable and payable under the lease,

96. The applicants say that the managing agents costs in dealing with the emergency plumbing should be part of the contractual arrangement with the respondent and should be covered by the management fees. They have asked on several occasions to see the contract between the managing agent and the respondent and this has not been provided.

97. The respondent says that this invoice is not related to the out of office hours emergency service which is simply a phone line which residents can ring in case of an emergency. The charge was for managing a project over a period of time in order to resolve matters for the tenants below and the applicants and for dealing with the investigation by a roofer and a building surveyor.

98. When asked by the tribunal Ms Gell was not able to break down how much of the charge related to dealing with the emergency on the night of the leak and how much related to dealing with the roof inspection.

The tribunal's decision

99. The tribunal determines that £0 is payable in respect of the managing agents administration charges.

Reasons for the tribunal's decision

100. It is unclear what part of the administration charge relates to the administration of the plumbing works and what relates to the administration of the roof works.

101. The part of the administration charge relating to the roof works is not payable by the applicant because the works to the roof should not have been charged to the applicant.

102. The part of the administration charge for administration of the plumbing works may potentially be payable under paragraph 24 of the Third Schedule. However there are two reasons why the tribunal determines that monies is not payable. First there must have been costs incurred by the respondent. The tribunal has considered the contract between the managing agents and the respondent which was provided to the tribunal subsequent to the hearing and which therefore the applicant has not been able to consider. It does not appear to the tribunal that there is a clause in that contract which entitles the managing agent to charge for the administration of the emergency plumbing works over and above the standard fee. Secondly the money could only be charged under paragraph 24 if there has been negligence or default by the applicant. This argument was not put to the applicant and no evidence of negligence or default has been provided to the tribunal.

Service charge item - £180

103. The applicant seeks evidence that this sum is reasonable and payable under the lease,

104. The respondent says that the fee is the administration fee for collating all the necessary paperwork/information for the solicitor in order for them to handle this claim.

The tribunal's decision

105. The tribunal determines that the amount payable in respect of [service charge item] is £0. .

Reasons for the tribunal's decision

106. The tribunal has considered the contract between the management company and the respondent and there appears to be no clause in that agreement which entitles the managing agents to charge for this service over and above the standard fee.

107. Therefore there were no costs incurred by the Company.

Service charge item - £906.50

108. The applicant seeks evidence that this sum is reasonable and payable under the lease.

109. The applicants also note that they offered to mediate the dispute but that this was refused.

110. The respondent says that this is for legal fees charged by the solicitor in preparing the case for the small claims court.

The tribunal's decision

111. The tribunal determines that the amount payable in respect of the legal costs is £0 .

Reasons for the tribunal's decision

112. The claim has been misconceived. The sums demanded were not recoverable as service charges and therefore the costs are not reasonable.

Application under Rule 13, s.20C and refund of fees

113. The respondent in its statement of case made an application under Rule 13 of the procedural rules. In the light of the findings of the tribunal this application cannot succeed.

114. In their application the applicants made an application for a refund of the fees that they had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the respondent to refund any fees paid by the applicants within 28 days of the date of this decision.

115. In the application form the applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The county court claim for costs and late payment provisions

116. In the light of the determinations above I consider that no costs and no late payment charges are payable.

Name: Judge H Carr **Date:** 13th September 2021

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.