FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at EDMONTON, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference	**:**	**LON/00BH/LSC/2021/0403**
Court claim number	**:**	**H5QZ7F74**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**278A High Road, Leytonstone, London E11 3HS**
Applicant/Claimant	**:**	**Essex Estates & Investments Limited**
Representative	**:**	**Nora Wannagat (Counsel)**
Respondent/Defendant	**:**	**Jessicah Omolara Openiyr North** **Andre Lee Davis Johnson**
Representative	**:**	**Julius Nkafu (Counsel)**
Tribunal members	**:**	**Judge Robert Latham** **Sarah Phillips MRICS**
In the county court	**:**	**Judge Robert Latham**
Date of hearing	**:**	**18 March 2022**
Date of decision	**:**	**6 April 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected by the parties. The form of remote hearing was V: SKYPEREMOTEOURT. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal has had regard to the bundle of documents prepared by the Applicant for the hearing which totals 166 pages and to which reference is made in this decision. A number of additional documents were produced at the hearing.

Summary of the decisions by the Tribunal

1. Service charges of £930.56 are payable in respect of insurance.

2. An additional sum of £344 will become payable on 24 June 2022 in respect of the insurance for the financial year 2021/22.

3. The Tribunal has dismissed the claims for management fees of £1,062 and administration fees of £300.

4. 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 proceedings may be passed to the Respondent through any service charge.

Summary of the decisions made by the Court

5. Arrears of ground rent of £1,050 subsisted on 25 June 2021, when the claim was issued. They were paid on 7 August 2021.

6. The Respondent is to pay the Applicant £500 in respect of legal costs.

7. The Court has drawn up an order to give effect to these determinations.

The Proceedings

1. This is yet another case in which the parties have failed to have had adequate regard to the terms of the lease which governs the contractual relationship between landlord and tenant. Any person acquiring any leasehold interest must inform themselves of the terms of the legal interest that they are acquiring. Equally, any landlord issuing legal proceedings for arrears needs to satisfy itself that demands for ground rent and service charges have been made in accordance with the terms of the lease. During the hearing, both parties provided N260 Statements of Costs. The Applicant claims £13,589.40; whilst the Respondent claims £5,852.10. The alleged arrears are just £3,210.

2. On 25 June 2021 (at p.2), the Applicant/Claimant issued proceedings in the County Court claiming £5,000 in respect of arrears of ground rent and

service charges in respect of the Flat 278A High Road, Leytonstone, London E11 3HS ("the Flat"). It was not apparent how this sum had been computed.

3. On 23 July 2021 (at p.30), the Respondent/Defendant filed a Defence disputing that the sums are payable. The Respondent denied that any lawful demands had been made. The Applicant had neglected the property. The sums claimed for insurance were grossly out of line with the market norm. The Applicant had failed to provide any management accounts.

4. On 7 August 2021, the Respondents cleared the arears of ground rent.

5. On 28 October 2021, Deputy District Judge Perry, sitting in the County Court at Edmonton, transferred the case to the First Tier Property Chamber Tribunal.

6. On 15 November 2021, Judge Martynski gave Directions (at p.38). He recorded that the Tribunal would administer the proceedings. The Judge would deal with all issues including interest and costs, whilst the Tribunal would deal with the payability of the service and administration charges. He allocated the claim to the Small Claims Track. Pursuant to the Directions:

   (i) The Applicant has disclosed a breakdown of the sums claimed (at p.49) and a copy of the demands (p.50-77). The Applicant stated that service charge accounts were not necessary as the only item claimed is for insurance. This is not correct. There has also been a charge for employing managing agents.

   (ii) The Respondent has filed a Statement of Case (at p.78-126) including all the documents upon which she seeks to rely. This includes a Scott Schedule (at p.124-126). Although the Defence had contended that the insurance premiums were unreasonable, no alternative quotes were provided.

   (iii) The Applicant filed a Case in Response (at p.127-161), including its response to the Scott Schedule (at p.148-151).

   (iv) The Applicant has filed a Bundle of Documents.

The Hearing

7. The Applicant was represented by Ms Nora Wannagat (Counsel) instructed by Lester Dominic Solicitors. She was accompanied by Ms Sahar Chaudhary, a trainee solicitor. She adduced evidence from Mr Asad Chaudhary, a director of the Applicant Company. The Applicant has a significant property portfolio. Mr Chaudhary stated that the total insurance premium payable for the block policy for the portfolio is some £120k per annum. Ms Wannagat adduced a number of additional documents which should have been in the Application Bundle. These

included section 146 Notice served on 2 June 2021 and certificates in respect of the insurance.

8. The Respondent was represented by Mr Julius Nkafu (Counsel) instructed by Samuel and Co. He adduced evidence from Ms Jessicah North, one of the two respondents. Ms North works as a freelance TV producer. She has suffered from long term depression. It is apparent that she finds it difficult to cope with her financial affairs, any unwanted bills causing unnecessary stress. She has been assisted by her mother, who also gave evidence. Mr Andre Johnson, the second respondent, is Ms North's foster brother. He does not live with her at the property.

9. Both Counsels provided Skeleton Arguments and we are grateful for the assistance which they provided. As the hearing progressed, it was apparent that there were a number of complexities to the lease which neither party had addressed. In the absence of full argument, the Tribunal will only make tentative findings as to how the lease should be construed.

10. When Directions were given, Judge Martynski had noted that the case might be suitable for mediation. Ms North states that she was willing to mediate. This was refused by the Applicant. Mr Chaudhury stated that he had refused mediation as this would merely have added to the cost of the proceedings. There is no reason why this application could not have been mediated without lawyers. The Respondent had cleared the arrears of ground rent. Mediation would have provided an opportunity for the parties to explore how the property should be managed, given the complexities of the lease. It is a matter of great regret that the option of mediation was rejected by the Applicant.

11. At the start of the hearing, the Tribunal sought to clarify precisely what the Applicant was claiming. Ms Wannagat confirmed that the Applicant was claiming the following (see p.27-28):

    (i) Seven six-monthly instalments of ground rent of £150 payable of 25 December 2017, 2018, 2019, 2020 and 24 June 2018, 2019, 2020, namely: £1,050. The Respondent had paid these sums on 7 August 2021.

    (ii) Insurance of £310.16 (for period 1.6.18-31.5.19); £310.18 (for period 1.6.19-31.5.20); £310.22 (for period 1.6.20-31.5.21); and £176.73 (for period 1.6.21-15.10.21), namely £921.56.

    (iii) Management fees of £354 (for the period 1.4.18-31.3.19); £354 (for the period 1.4.19-31.3.20); and £354 (for the period 1.4.20-31.3.2a), namely £1,062.

    Total: £3,210.29

12. Ms Wannagat applied for permission to amend to include the following sums in her claim:

    (i) Ground rent of £150 payable of 25 December 2021.

(ii) Insurance of £495 (for period 16.10.21-15.10.22);

(iii) An administration fee of £300 for late payment of the ground rent.

Mr Nkafu objected to these amendments. Judge Latham, having regard to the overriding Objectives in the Civil Procedure Rules ("CPR"), was satisfied that it was proportionate to allow the amendments and that no prejudice would be caused. The Respondent had included these items when she had prepared the Scott Schedule.

13. In the event, we can deal with these items briefly:

(i) Ground rent of £150 payable of 25 December 2021: Ms Wannagat conceded that no lawful demand had been made for this sum in accordance with section 47 of the Landlord and Tenant Act 1987. It is therefore not currently payable. It will become payable when the demand is made.

(ii) Insurance of £495 (for period 16.10.21-15.10.22): The Tribunal is satisfied that this sum has been demanded prematurely and has not yet become payable.

(iii) An administration fee of £300 for late payment of the ground rent. Ms Wannagat conceded that no lawful demand had been made for this sum. The sum is therefore not payable.

The Lease

14. The Respondent occupies Flat 278A pursuant to a lease dated 23 April 2017 (at p.8-26). Ms North and Mr Johnson acquired the leasehold interest in August 2017. This is a two bedroom flat. On 30 March 2021, the Applicant acquired the freehold interest in Nos. 276 and 278.

15. In the lease, the "Building" is defined as "278 High Road". However, the lease plan includes both Nos. 276 and 278. On the ground floor front of Nos. 276 and 278 High Road, Leytonstone, there is a double fronted shop, currently occupied by Sky Marketing. The address given for the shop is 276 High Road. On either side of this unit, there are entrance doors leading respectively to two residential flats, namely Nos. 276A and 276B and Nos. 278A and 278B High Road.

16. Flat 278A is on the ground floor. The entrance door includes a small hallway with one door leading to the ground floor flat and the other to a staircase which leads up to Flat 278B. The Respondent's demise includes the small strip of garden which runs to the side and rear of the flat.

17. The tenant is required to pay a ground rent of £150 on 24 June and 25 December (Clause 1).

18. The landlord's covenants are set out in Clause 3. The landlord covenants to:

(i) insure the Building (Clause 3(3)). Ms North states that she was unaware that this was the landlord's responsibility and took out her own insurance in the first two years. She should have had regard to the terms of the lease.

(ii) keep in good and substantial repair the structure and exterior of the building, together with the common parts. No service charges have been claimed in respect of any repairs. Ms North has not complained of any disrepair.

(iii) to keep the entrance hall clean, tidy and adequately lit (Clause 3(2)). In practice, the tenants have maintained the small hallway themselves. The electricity for the lighting seems to come off Ms North's supply. The tenants have been content with this arrangement.

19. The tenant's covenants are set out in Clause 2. The tenant covenants to keep in repair and maintain the interior of the Flat including the windows, but excluding the main and party walls and the joists above her ceilings.

20. The tenant covenants to pay on **24 June** in each year 50% of the landlord's expenses incurred by the landlord in providing the services specified in Clause 2(3)(i). These include (i) the cost of insuring the Building; (ii) the landlord's expenses in repairing and maintaining the Building and the common parts; and (iii) the expenses of employing managing agents to manage the Building and a firm of accountants to prepare a management account.

21. Clause 2(3)(ii) sets out the service charge mechanism:

(i) The amount of the service charge is to be ascertained and certified by a certificate, "The Certificate", which is to be signed by the Lessor's auditors or accountants or managing agents annually, and so soon after the end of the financial year as may be practical (subparagraph (a)).

(ii) The "Lessor's financial year" is defined as **1 April to 31 March** (subparagraph (b)).

(iii) The Lessor is only required to provide a copy of the certificate if this is requested in writing by the tenant (subparagraph (c)).

(iv) The Certificate shall contain "a summary of the Lessor's expenses and outgoings during the financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge" (subparagraph (d)).

(v) The expression "the expenses and outgoings incurred by the Lessor" shall be deemed to include not only those expenses actually incurred in the financial year, but also a "reasonable provision for anticipated expenditure ..... as the Lessor or its accountants or managing agents .... in their discretion may allocate to the year in question...." (Subparagraph (e)). This includes both expenditure of "a periodically recurring nature" and "reasonable provision for anticipated expenditure".

(vi) As soon as practicable after The Certificate has been signed, the Lessor shall provide the tenant an account of the service charge payable for the year in question, credit being given for any interim payments (subparagraph (f)).

(vii) The consequences of the Lessor failing to certify the service charge are specified in subparagraph (g). The lessor is not entitled to re-enter prior to The Certificate being signed. However, it is entitled to sue for payment of any arrears.

22. By Clause 2(10), the tenant covenants to: "pay to the Lessor all expenses (including Solicitor's costs and Surveyor's fees) incurred by the Lessor incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided".

23. The landlord has not prepared any budget of its "expenses and outgoings" as required by the lease. No Certificate has been signed by the landlord's auditors, accountants or managing agents. Indeed, the involvement of auditors and accountants would seem to be an unnecessary expense since the only service charges claimed relate to insurance and the cost of employing managing agents.

24. The Tribunal is satisfied that two consequences arise from the manner in which the landlord has operated the service charge account:

(i) The landlord is only able to claim in respect of the expenditure actually incurred in any financial year. Thus, the service charge payable on 24 June 2021 is the expenses and outgoings actually incurred in the financial year 1 April 2020 to 31 March 2021.

(ii) The landlord has had no right to forfeit the lease on grounds of non-payment of the service charges.

The Background

25. On 14 August 2017, Ms North and her foster brother acquired the leasehold interest in the Flat. Mrs North advised her daughter against acquiring a leasehold interest. In retrospect, this may have been sound advice. At the time, the freehold interest was owned by Arora Estates Limited. The Building was being managed by Synergy Home Management ("Synergy"). On 19 December 2017 (at p.50), Synergy issued a demand for ground rent of £150 for the period 25 December 2017 to 23 June 2018. Ms North did not pay this sum.

26. On 28 June 2018 (at p.54), Synergy issued a demand for the following sums totalling £814.16, namely: (i) ground rent of £150 (24 June to 25 December 2018); (ii) management fee of £295 (1 April 2018 to 31 March 2019); and (iii) insurance of £310.16 (1 June 2018 to 31 May 2019). In an email (at p.134), Synergy reminded Ms North that the additional £150 was outstanding.

27. On 25 July (at p134), Ms North sought clarification as to how she should make a payment and queried the charge. She stated that there had been no manager for the building. She had arranged her own insurance. On 26 July 2018 (at p.133), Synergy provided details of how payments should be made. The manger stated that there was a standard management fee for "desktop management". Under the terms of the lease, the freeholder was responsible for insuring the Building. On 27 July (at p.132), Ms North responded and said she had only just learnt of the existence of Synergy. When she acquired her lease, she had understood that no service charge was payable. She was only willing to pay the ground rent. She did not pay this.

28. Thereafter, Synergy issued the following demands:

    (i) 9 January 2019 (p.57), ground rent of £150 for the period 25 December 2018 to 23 June 2019;

    (ii) 8 July 2019 (p.60): ground rent of £150 (24 June to 25 December 2019); management fee of £295 (1 April 2019 to 31 March 2020); and Insurance of £310.18 (1 June 2019 to 31 May 2020).

    (iii) 7 February 2020 (p.64), ground rent of £150 for the period 25 December 2019 to 23 June 2020;

    (iv) 3 April 2020 (p.68), management fee of £295 (1 April 2020 to 31 March 2021);

    (v) 8 July 2020 (p.71): ground rent of £150 (24 June to 25 December 2020); and Insurance of £310.22 (1 June 2020 to 31 May 2021).

    (vi) 28 March 2021 (p.73), ground rent of £150 for the period 25 December 2020 to 23 June 2021.

    The Respondent did not pay any of the sums which had been demanded.

29. On 30 March 2021, the Applicant acquired the freehold interest in the Building. On 6 April (p.139), Ajay Arora, Solicitors for the vendor, informed the tenants of the flats at Nos. 276 and 278 High Road of the sale. The tenants were notified that all arrears and future rents and other charges should be paid to the Applicant. On 13 April (p.140), the Applicant notified Ms North that Ascots Property Services ("Ascots") had been appointed "to commence management for service charges and ground rent".

30. On 15 April 2021 (at p.27), Ascots demanded payment of £3,210.29. These are the sums summarised at [11] above. On 18 May (p.77), Ascots sent a Final Notice before Legal Action in respect of the outstanding arrears of £3,210.39. On 2 June, Lester Dominic sent a Section 146 Notice in respect of the arrears of £3,210.29 together with a claim for legal costs of £750 + VAT in respect of the preparation and service of the notice. On 25 June (p.1), the Applicant issued its claim in the County Court Business Centre.

The Claim for Arrears of Ground Rent – DJ Latham

31. It is accepted that arrears of ground rent of £1,050 subsisted when the Section 146 Notice was issued on 2 June 2021 and the Claim was issued on 25 June 2021. DJ Latham is satisfied that lawful demands had been made for these sums. On 7 August 2021, Ms North paid these arrears. Ms North provided no adequate explanation for her failure to pay any ground rent. This is a fixed amount. She would be well advised to set up a standing order in respect of this sum to avoid the worry of unnecessary demands.

32. No interest is claimed. The only outstanding issue is any costs payable in respect of this claim. The Applicant claims contractual costs pursuant to the terms of the lease. Alternatively, costs are claimed under the CPR.

The Claim for Arrears of Service Charges – the Tribunal

Insurance

33. The Applicant claims the following sums in respect of insurance:

(i) £310.16 (for period 1.6.18-31.5.19). This was demanded by Synergy on 28 June 2018 (at p.54). This sum should have been included in the accounts for 2018/9. It would only have become payable on 24 June 2019.

(ii) £310.18 (for period 1.6.19-31.5.20). This was demanded by Synergy on 8 July 2019 (at p.60). This sum should have been included in the accounts for 2019/20. It would only have become payable on 24 June 2020.

(iii) £310.22 (for period 1.6.20-31.5.21). This was demanded by Synergy on 6 July 2020 (at p.71). This sum should have been included in the accounts for 2020/21. It would only have become payable on 24 June 2021.

(iv) £302.11 (for period 23.2.21-15.10.21). There is an invoice from Oak Insurance Services, dated 31 March 2021 (at p.160). This purports to be a pro rata payment for 236 days at an annual premium of £467.25 under the Applicant's block policy. Ms North denied that she had received this demand. Ms Wannagat relied on a certificate of posting, dated 18 May 2021, at p.155. The Tribunal is satisfied that this demand (if issued) was superseded by the next demand, dated 18 May 2021. The certificate of posting rather related to this later demand. The Building was already covered by insurance for the period 23 February to 31 May 2021. The Tribunal is satisfied that it is not payable.

(iv) £176.73 (for period 1.6.21-15.10.21). On 18 May 2021, Ascots demanded payment of this sum (p.156). This purports to be a pro rata payment for 137 days at an annual premium of £467.25 under the Applicant's block policy. The Tribunal is satisfied that this sum should be included in the accounts for 2021/22. It would only become payable on 24 June 2022.

(v) £495 (for period 16.10.21-15.10.22). There is an invoice from Oak Insurance Services, dated 10 November 2021 (at p.160). Mr Chaudhury

stated that this had been arranged under the Applicant's block policy. The Tribunal is satisfied that this sum should be included in the accounts for 2021/22. It would only become payable on 24 June 2022.

34. Apart from these issues of payability, the Respondent challenges the reasonableness of the sums charged for insurance. Synergy charged annual premiums of £310.16 (2018/9); £310.18 (2019/20) and £310.22 (2020/1). During the course of the hearing, the Applicant provided the Tribunal with copies of the relevant Certificates of Insurance. The insurer is Aviva Insurance Limited ("Aviva"). The premium for 2020/21 relates to both Flats 278A and 278B and is £620.44, including insurance premium tax of £66.48. The declared value of the Building is £230,819, whilst the "Day 1 basis" is £288,524. There is an excess of £1,000 for subsidence and £350 for storm damage.

35. Had the Respondent taken the initiative to challenge the insurance premiums pursuant to section 27A or the Landlord and Tenant Act 1985, the tribunal would have given more detailed directions. We have not been provided with a summary of the policy terms and conditions. The Respondent has not provided any alternative quotes. We are an expert Tribunal. On the basis of the limited material before us, we conclude that the insurance premiums are not out of line for a Building of this nature.

36. We have concluded that the sums charged by Ascots, namely £176 (for the period 1.6.21-15.10.21 assessed on an annual premium of £467.25) and £495 (for period 16.10.21-15.10.22) will not become payable until 24 June 2022. However, section 27A(3) of the Landlord and Tenant Act 1985 gives us jurisdiction to determine the reasonableness of service charges that will become payable.

37. Mr Chaudhury told the tribunal that the Applicant has a block policy that covers all their property portfolio, many of which are commercial units. The total premium is some £120k per annum. He suggested that such a block policy secures best value for its tenants.

38. The Certificate of Insurance for the period 16 October 2021 to 15 October 2022 is at p.154. The Insurer is EKU Underwriting Limited. The annual premium is £495, compared with £310.22 charged by Aviva. However, the policy seems to be substantially less favourable. The declared value of the "Building" is £102,500. The Policy refers to four long term leases at 276-278 High Road. It is unclear whether the value of the Building relates to Flat A or the four flats. The declared value seems unduly low, even if only for Flat A. Further, there is no uplift for the "Day 1 basis". The excess for subsidence is £2,000, whilst that for storm damage is £1,500.

39. Compared with the cover provided by Aviva, the premium is manifestly unreasonable. The excesses are substantially higher. We would cap the premium at £250 per annum, given the more limited cover.

Management Agents Fees

40. The Applicant claims the following sums in respect of management fees:

(i) £295 (for period 1 April 2018 to 31 March 2019). This was demanded on 28 June 2018 (p.54);

(ii) £295 (for period 1 April 2019 to 31 March 2020). This was demanded on 8 July 2019 (p.60);

(iii) £295 (for period 1 April 2020 to 31 March 2021). This was demanded on 3 April 2020 (p.68).

41. Since the Applicant acquired the freehold, no charge has been made for managing agents. The Tribunal is satisfied that the landlord is entitled to employ managing agents to manage the Building and that an annual fee of £295 would normally be reasonable for a flat of this nature. The problem is that there is no evidence that the Building has been managed. The Tribunal has not been provided with a copy of the Synergy management agreement, so we are not in a position to determine what services should have been provided. There is no evidence of any annual inspections or health and safety checks. The tenants have taken it upon themselves to maintain the communal hallway. The landlord has expended no sums on repairs. The only service that has been provided is the issue of an annual demand for payment of service charges. These have not been issued in accordance with the terms of the lease. In such circumstances, the Tribunal disallows all the claims for managing agents fees.

Other Matters

42. The Applicant raised an issue of Japanese Knotweed. This can cause serious damage to the foundations of a building, if not treated. It seems that the tenant of Flat 278B (the upstairs flat) wanted to sell his flat and the purchaser would only complete if the Knotweed was treated. The Applicant paid the cost of treatment (see p.142-146). It is not entirely clear what cost the Applicant is seeking to pass on to the Respondent. This is not part of the current claim. However, to avoid future litigation, we make the following observations. It seems that the Knotweed was in the small garden area demised to the Respondent. Ms North stated that the garden was in a neglected condition when she acquired her leasehold interest in August 2017 and that she has now cleared this. She provided photographs at p.112-123. The parties need to agree who is responsible to maintain this modest garden area. If it is the tenant's responsibility, the landlord should have given her a reasonable opportunity to abate the problem.

43. Mr Chaudhury suggested that the Knotweed was one of the reasons that the insurance premium had increased. However, when challenged, he conceded that this had not been disclosed to the insurers.

Costs claimed pursuant to the terms of the lease and under the CPR – DJ Latham

44. The Applicant claims costs pursuant to (i) the CPR and (ii) the terms of the lease. The Respondent claims her costs pursuant to the CPR. During the hearing, both parties provided N260 statements of Costs. The Applicant claimed £13,589.40; whilst the Respondent claimed £5,852.10. Neither

party served their notices two clear days before the hearing. The parties accepted that the case had been allocated to the Small Claims Track and agreed that any such costs should therefore be limited to £1,500. Ms Wannagat also claimed the fixed fees specified on the Claim Form: £285 (p.2). Finally, she claimed £750 + VAT in respect of the cost of serving the Section 146 Notice. DJ Latham indicated that he considered that the sum claimed for this Notice was manifestly excessive, particularly given the defect in the notice. There was no right to forfeit for the service charge arrears as no relevant Certificates had been issued.

45. In determining the issue of costs, DJ Latham has regard to the following:

(i) The Applicant is only entitled to claim contractual costs in respect of the arrears of rent. Arrears of rent of £1,050 subsisted on 25 June 2021, when the claim was issued. They were paid on 7 August 2021. Thereafter, there would be no realistic prospect of forfeiture and the only issue would be costs. The Respondent has provided no adequate explanation for her failure to pay the ground rent.

(ii) The significant claim has been for arrears of service charges, namely £921.56 for insurance and £1,062 in respect of management fees. The Tribunal has found that the insurance charges are reasonable, but has disallowed the claim for management charges. These sums had not been demanded in accordance with the lease. There has been no right to forfeit in respect of these arrears as no Certificates have been issued as required by the lease. The Applicant therefore has no right to claim contractual costs in respect of this aspect of its claim.

(iii) The Applicant refused the Respondent's offer of mediation. DJ Latham is satisfied that this matter could have been mediated without the involvement of lawyers. This could have opened up effective communication between the parties and provided an opportunity to explore how the property should be managed, given the complexities of the lease.

(iv) The Applicant has been the winner in this litigation, in that arrears of £930.56 in respect of insurance have been found to be payable. It is doubtful that the arrears of ground rent would have been paid, had proceedings not been issued.

46. Taking all these matters into account, DJ Latham orders the Respondent to pay costs of £500.

<u>Costs claimed under the Tribunal Rules – The Tribunal</u>

47. Both parties applied for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case. In *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), the Upper Tribunal set a high threshold before any such order is made.

48. The Tribunal made it clear to both Counsel that neither side came near to satisfying the high threshold for such an award. Mr Nkafu withdrew his application in the light of this indication. Ms Wannagat stated that she was instructed to proceed with her application. She suggested that Ms North had acted manifestly unreasonably in failing to read the terms of her lease. Had she done so, she would have been aware of her liability to pay the ground rent and service charge. It ill beheld Ms Wannagat to make this submission, given that the Applicant had issued proceedings without informing themselves as to the terms of the lease. However, there is a fundamental problem to her application. The Applicant must establish that the Respondent acted unreasonably in defending these proceedings. She has instructed solicitors who have complied with the directions given by the tribunal. The application is hopeless.

49. The Tribunal is further satisfied 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Conclusions

50. DJ Latham has found that arrears of ground rent of £1,050 subsisted on 25 June 2021, when the claim was issued. They were paid on 7 August 2021.

51. The Tribunal has found that the following insurance premiums are payable: £310.16 (for the 2018/9 service charge year); £310.18 (2019/20) and £310.22 (2020/1), a total of £930.56.

52. The Tribunal has found that the following insurance premiums will become payable on 24 June 2022, namely £344 for the 502 day period between 1 June 2021 and 15 October 2022 (namely £0.58p per day).

53. The Tribunal has dismissed the following claims: (i) management fees of £1,062; and (ii) administration fees of £300.

54. DJ Latham has ordered the Respondent to pay the Applicant costs of £500.

55. DJ Latham has drawn up an order to give effect to these determinations.

56. The Tribunal has identified a number of complexities in the lease. It is in the interests of both landlord and tenant to agree on how the Building should be managed. It is always open to the parties to utilise the mediation service offered by the tribunal. Ms North must recognise that her service charges may increase if the landlord manages her flat in accordance with the terms of her lease. She must also recognise that the legal fees claimed may far exceed any arrears, if she fails to pay the sums that are lawfully demanded.

Judge Robert Latham,
6 April 2022

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.