FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal reference	**:**	**CAM/00KF/LSC/2022/0052**
Court claim number	**:**	**J07YJ480**
Property	**:**	**Ground Floor Flat 12 Rayleigh Avenue Westcliff-on-Sea Essex SS0 7DS**
Applicant/Claimant	**:**	**Westleigh Properties Limited**
Representative	**:**	**Gateway Property Management Limited**
Respondent/Defendant	**:**	**Miss Susan Ying Wu**
Tribunal members	**:**	**Judge David Wyatt Mr P Roberts FRICS CEnv**
Date of decision	**:**	**3 March 2023**

DECISION

Decisions made by the Tribunal

(1) The following service charges became payable by the Respondent to the Applicant by the following dates and remain payable:

Service charge item	Amount (£)	Payable by
Balance of general 2015/16	170.62	16 November 2016
Balance of general 2019/20	855	1 January 2020
General 2020/21	1,134.38	1 January 2021
First 50% of general 2021/22	538.03	1 July 2021

Estimated cost of major works (exterior repairs and decoration)	1,450	16 November 2016
Estimated cost of major works (roof)	5,037.40	6 August 2019
Total	9,185.43	

(2) For the purpose of determining payability of the above service charges, we are not satisfied that the Respondent is entitled (by way of counterclaim or otherwise) to any sums from the Applicant which could be set off against the above service charges.

(3) The proceedings shall be transferred back to the county court.

Remaining matters to be decided by the county court

(4) The Applicant has conceded the matters noted at paragraph 6 in the next section of this decision.

(5) The parties are strongly encouraged to discuss the remaining items described below to seek to dispose of them by agreement. Our comments in a) to e) below may help but they are not part of our decision; we cannot advise and make no findings in relation to these matters. If the parties are unable to reach agreement it appears to us that the remaining issues for the county court to consider in these proceedings will be:

a) the claimed annual ground rent of £100 from 1 July 2020 (the Respondent is encouraged to carefully check the statement of account at page 163 of the Applicant's bundle, which appears to indicate that the Respondent's payment of £100 on 9 June 2021 was for the ground rent of £100 due by 1 July 2021, as the Applicant contends, not the rent from the previous year);

b) dismissal of the counterclaim and entering Judgment for the service charges we have determined in the table above and any ground rent found by the court to be due;

c) any statutory interest on any such sums (if the court awards pre-Judgment interest, it might be appropriate to do so for the first four service charge items but not the last two service charge items because in relation to those most or all of the relevant costs will not yet have been incurred); and

d) any legal costs still claimed under clause 3(ix) of the lease (as to which it may be relevant that the statement of account mentioned above appears to indicate that the Applicant continued to demand service charges/ground rent through 2011 and after issue of the proceedings in 2022 and accepted payments of ground rent in June 2021 and June 2022) and/or under the CPR.

Reasons

Background

1. On 14 December 2021, the Applicant sent a letter before action to the Respondent claiming £10,341.59 for service charges and other sums, stating this was a precursor to forfeiture of the lease and, under the terms of the lease, costs incurred in contemplation of or incidental to preparation and service of a notice under section 146 of the Law of Property Act 1925 were payable by the Respondent.

2. Proceedings were then issued against the Respondent on 17 February 2022 in the County Court under claim number J07YJ480 claiming a total of £11,305.97 plus statutory interest and costs. The Respondent filed a Defence and Counterclaim dated 13 March 2022, disputing the full amount, contending that payments had been made and counterclaiming £12,614.83 for money said to have been paid in the past for work that had not been done. The Respondent filed a Defence to Counterclaim dated 20 April 2022. The proceedings were then transferred to the County Court at Chelmsford and then to this tribunal by the order of District Judge Molineaux dated 1 September 2022, which reads: "*Matter transferred to the First Tier Property Tribunal*".

3. On 27 October 2022, a procedural Judge gave case management directions, providing for the Applicant to produce further information by 14 November 2022, the Respondent to produce their case documents by 12 December 2022 and the Applicant to produce their case documents by 16 January 2022. Pursuant to the directions, the Applicant produced the hearing bundle of 286 pages. On 25 January 2022, the Respondent produced her own additional bundle of documents; some of the contents were those which had been produced pursuant to the directions and some had been added or modified. On 6 February 2023, the tribunal received from the Respondent a further witness statement from Ms Jo Cavill, the current tenant of the Property, explaining why she would be unable to attend the hearing and giving further details. We decided to take all of these documents into account.

The hearing

4. The hearing from 7 February 2023 followed an inspection of the Property that morning. At the hearing, the Applicant landlord was represented by Kerry Coleman, in-house solicitor. Cydney Owen, property manager, gave evidence. The Respondent was represented by her daughter, Moira Wong, who attended and used her mobile telephone on speaker so that the Respondent could attend remotely. The Respondent had been taken to hospital the night before the hearing, but confirmed she wanted the hearing to proceed in this way.

5. We clarified the points in dispute and heard the witness evidence (Miss Owen for the Applicant and Mrs Karumazonda, a former tenant of the Property, for the Respondent), as requested. The Respondent then asked for an adjournment until 2pm, expecting to be able to get back from the hospital by then. When we resumed, the Respondent asked for an adjournment to the following day because she had not yet been discharged and felt she would be unable to make her arguments effectively with medical professionals coming in periodically. The following day had already been reserved, so we agreed to adjourn to 11am on 8 February 2022 to hear the matter remotely by video. When we resumed, the Respondent represented herself, assisted by her daughter. As requested, we began by repeating for the Respondent the points clarified and the substance of the evidence given the previous day, since she had mentioned there had been some interruptions, and gave a break after the Applicant's submissions for the Respondent to prepare her submissions. The tribunal had arranged for an interpreter to attend on both days and they remained throughout, assisting when the Respondent wished.

6. Mrs Coleman conceded the specific sums of interest which had been claimed in the proceedings (£5.62 from February 2014, £0.05 and £18.89 from August 2016 and £12.30, £423.06 and £726.37 from January 2022). She confirmed the lease contained no provision for contractual interest and the sole claim to interest was under section 69 of the County Courts Act 1984 on any sums we (or, in relation to the outstanding ground rent claim, the county court) decide are payable. Mrs Coleman also conceded the legal expenses of £300 and £360 which had been claimed from February 2014 and January 2022 respectively.

Building - inspection

7. The building is a mid-terrace with front bay windows to Rayleigh Avenue and a chimney stack shared with the neighbouring building. The substantial front ground floor bay window sills are part of the building (not demised to leaseholders) and are cracked. The communal front door and the small communal hallway are in need of decoration, with partially torn and tired wallpaper and marks. The electrical installations in the hallway appear more recently updated, but we were told this work had been arranged by the Respondent at her own cost.

8. Access to the rear is through the ground floor flat, which is in a relatively poor condition inside, with extensive mould pointed out by the Respondent's tenant in the front room. The rear has been extended back, with the neighbouring building; the pitched roof is at 90 degrees to the front. Slates have fallen from that roof and smashed on the path beside the extension. The rear guttering has some loose joints and growth. There are some areas of loose or missing mortar around bricks. The back edge of the roof has cracked and fallen mortar, but it

is not possible to see the entire rear roof from ground level in the rear garden. To avoid repetition, we refer to other particular points from our inspection later in this decision.

Lease

9. The Applicant's freehold title to 12 Rayleigh Avenue is subject to the lease of the ground floor flat and garden land, and a lease of the first floor flat. The Respondent purchased her lease of the ground floor flat in October 1999. The Respondent's lease was granted on 6 February 1987 for a term of 99 years from 1 July 1986, reserving an annual rent of £50 "*for the first 33 years*" and £100 for the next 33 years, payable on the first of July each year, with the first payment to be a proportionate part calculated from the date of the lease to the following payment date.

10. In clause 4(iv), the leaseholder covenants to pay the "*Interim Charge*" and the "*Service Charge*" as set out in the Fifth Schedule. The Interim Charge is "*…such sum to be paid on account of the Service Charge in respect of each Accounting Period … to be a fair and reasonable interim payment…*" and the Service Charge is one half of the "*Total Expenditure*". That is defined as the total expenditure incurred in carrying out the landlord's obligations under clause 5(v) and: "*…any costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the costs of employing managing agents and solicitors as and when required (b) the costs of any accountant surveyor or other person employed to determine the total expenditure and the amount payable by the Lessee hereunder*."

11. Clause 5(v) obliges the landlord to (amongst other things) repair the structure, exterior walls, roof, water tanks, conduits, gutters and rainwater pipes (A), decorate (B) and insure (C) the building, keep the common parts clean (D), employ a firm of managing agents (F)(a) and all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the building, "*…to do or cause to be done all such works installations acts matters and things as … may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building*" (I) and set aside such sums as reasonably required to meet future costs of replacing maintaining and renewing those items the landlord has covenanted to replace, maintain or renew, such setting aside to be deemed to be expenditure for the purposes of the Fifth Schedule (J).

12. Under paragraph 3 of the Fifth Schedule, the Interim Charge is to be paid by two equal payments in advance on the 24 June and 25 December in each year. Under paragraph 5, if the Service Charge exceeds the Interim Charge, the leaseholder: "*…shall pay the excess to*

the Lessor within twenty-eight days…" of the landlord's service charge certificate.

13. In clause 3(ix), the leaseholder covenants to pay all costs: "*…including Solicitors' Counsels' and Surveyors' costs and fees … incurred … in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 … including in particular all such costs … of and incidental to the preparation and service of a Notice under the said sections and of and incidental to the inspection of the Demised Premises and the drawing up of the Schedules of Dilapidations…*"

Basic service charges for the years in dispute

14. The service charge year runs from 1 July to 30 June. The Applicant disputed all the service charge costs incurred for the service charge years ending 30 June 2016, 2020, 2021 and 2022. No service charge accounts or other information (except in relation to the counterclaim described below) were produced for any other service charge years.

1 July 2015 to 30 June 2016

15. The buildings insurance cost of £1,026 appears high, but in the absence of any comparable quotation or the like from the Respondent, we are not satisfied that this is more than the upper end of reasonable cost for this building. The Applicant confirmed that the insurance is arranged under a block policy but the broker is independent from the Gateway group and no commission is paid.

16. We consider that in the circumstances the management fee of £637 (including VAT) is reasonable, at about £265 plus VAT per unit. However, since accountancy fees of £48 and bank charges of £12 are charged in addition (and are, we consider, reasonable), the additional charges for postage (£12) and the standing charge for an out of hours emergency service (£36) were not reasonably incurred, because they should be included in the management fee we have allowed. To put it another way, if we allowed such charges, we would have reduced the management fee to account for them, because otherwise it would not be reasonably incurred.

17. We are satisfied that the remaining £480 fee was reasonably incurred as 50% of the fee charged by the surveyors (who again are part of the Gateway group) for preparing the consultation notices for the planned repair and redecoration works (considered below).

18. The total reasonably incurred costs were £2,203 and the Respondent's half share is £1,101.50. The Applicant demanded their usual two interim estimated charges of £465.88; the Respondent paid the first,

paid £465 towards the second (£930.88) and made no payment towards the Applicant's balancing demand of £193.81. Accordingly, the balance which became payable by the Respondent by 16 November 2016 (28 days after the balancing charge demand) is **£170.62** and it remains unpaid.

1 July 2019 to 30 June 2020

19. Again, the insurance cost of £1,041 appears high, but for the same reasons as given above and given that it appears likely (for the reasons noted below) that the building was at this time already in need of repair and service charges for the estimated costs of repair had not been paid, we are not satisfied that this is more than the upper end of the range of reasonable cost.

20. The Applicant said the cost of £66 for "repairs and maintenance" was incurred to clean the gutters. We accept the evidence of the Respondent and her witnesses that the rear gutters were not cleaned. However, we are satisfied that the front gutters probably were. The only ready access to the rear is through the ground floor flat, with various internal corners. The facilities maintenance company in the same Gateway group as the Applicant would clean the front gutters and attempt to clean the rear gutters if they could obtain access. Mrs Karumazonda acknowledged that if they had cleared only the front gutters she may well not have seen them. In the absence of any alternative quotation, we consider the cost of £66 for annual clearance of the front gutters to be reasonable.

21. The management fee of £827 appears too high, with the accountancy (£48) and bank charges (£12) payable in addition. The Applicant had already agreed to reduce the management fee for this and the following years to £600 plus VAT (£720). For the same reasons as given above, we are satisfied that this is a reasonable fee only if the additional account management fee (£45), postage (£12) and out of hours emergency service (£45) fees are not payable.

22. We are not satisfied that the legal costs of £300 claimed as service charges for this year are payable. Mrs Coleman argued that they are payable under clause 5(v)(I) of the lease because they were the managing agent's charge for writing to a leaseholders' mortgage lender to seek payment of outstanding service charges. We are not satisfied that they were; the relevant recovery correspondence was not produced and such a charge does not belong with the matters described in that sub-clause. As noted above, this is a sweep-up clause which refers to matters in relation to the proper maintenance, safety, amenity and administration of the "*Building*".

23. The total reasonably incurred costs were £1,887. The Applicant took £177 from the reserve fund towards these costs, leaving a balance of £1,710. The Respondent's half share is £855.

24. The Applicant had demanded their usual two interim estimated charges of £465.88 and then a balancing charge of £176.36. The Respondent said she had paid that first £465.88 in August 2019, but we are not satisfied that she did. We put it to the Respondent at the hearing that, as the Applicant said, it appeared from the statement of account that the Respondent had fallen behind on earlier payments and she had not specified when making payments which charges they should be allocated to, so the Applicant had allocated them to the earliest charges. Looking at the various interim charges and payments of £465.88, the charge from January 2017 was paid in August 2017, the charge from July 2017 was paid in December 2017, the charge from January 2018 was paid in July 2018, the charge from July 2018 was paid February 2019 and the charge from January 2019 was paid by the Applicant's payment on 7 August 2019. The Respondent said this assessment was wrong, but gave no reason, evidence or argument to answer it. We are satisfied that the Respondent had paid nothing for this year; the amount which became payable by the Respondent by 1 January 2020 was **£855** and it remains unpaid.

1 July 2020 to 30 June 2021

25. For the same reasons as in the previous year, we allow the buildings insurance cost of £1,106.07, gutter clearance charge of £66, accountancy fees of £48 and bank charges of £11.99, reducing the management fee to £720 and disallowing the account management fee of £36, postage of £12 and out of hours emergency charge of £42. The Applicant added £316.70 to be transferred to the general reserve fund and that appears reasonable because after the withdrawal the previous year it appears there was nothing left in that reserve fund. The total is £2,268.76 and the Respondent's half-share is £1,134.38. For this year, the Applicant increased their half-yearly interim charge for estimated costs to £628.94, but nothing was paid by the Respondent for this year. Accordingly, the amount which became payable by the Respondent by 1 January 2021 was **£1,134.38**.

1 July 2021 to 30 June 2022

26. In our assessment, up to £1,200 of the buildings insurance of £1,254.70 was reasonably incurred, for the same reasons as in the previous years and to keep the increase to less than 10% compared to the previous year's premium, as in the earlier years. For the same reasons as in the previous year, we allow the gutter clearance charge of £66, accountancy fees of £48 and bank charges of £12, reducing the management fee to the agreed £720 and disallowing the account management fee of £41.95, postage of £12 and out of hours emergency charge of £44.98.

The Applicant added £106.12 to be transferred to the general reserve fund and again that appears reasonable. The total is £2,152.12 and the Respondent's half-share would be £1,076.06.

27. On 3 June 2021, the Applicant demanded their first interim charge of £628.94. That sum was claimed in these proceedings, but the balance was not and no demand for the balance was included in the bundle. We agree with the Respondent that on the information provided, the increased estimated charge was probably a little too high. The amount which became payable by the Respondent by 1 July 2021 in relation to the first demand is **£538.03** (half of the £1,076.06). Although we make no determination of this because it is not part of these proceedings, it seems to us that the balance of £538.03 would be payable in addition for this service charge year if the relevant interim charge was demanded (it appears likely from the statement of account, showing £628.94 for 1 January to 30 June 2022, that it was).

Major works planned 2015/16 - repair and redecoration £1,690

28. These remain estimated charges; the Applicant had not carried out the proposed works because the Respondent had not paid the estimated charge demanded for them.

29. In 2015, the Applicant had instructed their surveyor to inspect and prepare a specification for external repair and redecoration work. We noted that this included remaking leaking joints to the gutters (which does appear to be a problem at the rear of the property), a provision for raking out and repointing limited areas of brickwork (which again does seem from the inspection to be appropriate, with some missing mortar apparent at the rear), cleaning and other repairs and redecoration. The specification was used as part of the usual statutory consultation process and of the two estimates received from contractors the lowest was £3,620 (with no VAT chargeable). The Respondent said she was unhappy about a provision for preliminaries and some of the cleaning and other items included in the schedule of work, but in our assessment the overall estimated cost is reasonable.

30. To that lower estimated price, the Applicant sought to add £120 for an asbestos survey, £960 for the surveyor's fee and £480 for their property management fee, all inclusive of VAT. Half of the surveyor's fee of £960 is already part of the general service charge for 2015/16, as noted above, so only the balance of £480 is to be included. In the absence of any alternative quotation, we are satisfied that the total of £4,700 is a reasonable estimated cost. As explained in the consultation notices, the Applicant had allocated £1,800 towards the cost from the repair and redecoration reserve fund. That leaves a balance of £2,900, of which the Respondent's half share is £1,450. On 20 June 2016, the Applicant had demanded their figure of £1,690. We are satisfied that

£1,450 is a reasonable estimated charge and was payable by 16 November 2016.

31. We emphasise that our determination is only of the reasonable estimated cost for appropriate repair and redecoration work, not that the costs incurred in such work will necessarily have been reasonably incurred. In view of the passage of time and any new disrepair which may not have been apparent in 2015, such as the crack(s) in the front ground floor window sill, the Applicant may for example wish to arrange to update the specification and conduct a fresh consultation exercise to ensure that reasonable use is made of the sums available.

Major works planned 2018/19 - roof works £5,037.40

32. Again, these remain estimated charges; the Applicant had not carried out the proposed works because the Respondent had not paid the estimated charge demanded from them.

33. On 21 August 2018, the Applicant had proposed to replace the roof. They told us this had been prompted by a reported leak. They did not prepare a specification, but sought estimates from three roofing specialists. These each came in with their own specifications and are closely grouped, at £8,579, £8,583 and £8,806, all plus VAT. The Applicant proposed to proceed with the supplier who had given the lowest estimate. The Applicant sought to add £300 for their surveyor's fee and £480 for their property management fee, a total of £11,074.80. Miss Owen said that on 23 December 2022 the leaseholder of the first floor flat had reported a new leak from the roof into their bedroom. She arranged for a contractor to attend and said they had advised the roof could not be repaired temporarily and roof needed to be replaced.

34. The Respondent argued that the cost was "*quite a lot*". She told us at the hearing that in any event replacement of the roof of another property of hers had cost much less, but produced no evidence of that or the nature of the roof of her other property. As noted above, the Property has a front pitched roof and a rear extension with a pitched roof 90 degrees to the front, with restricted access at the rear. Further, the Respondent argued at the hearing that the roof did not need to be replaced, only repaired, and told us that she estimated the repair costs would be about £2,000.

35. We do not have any real evidence from the Respondent to challenge the Applicant's case that the roof needs to be replaced. On inspection, it was difficult to see the condition of the roofs clearly. The front roof did not appear in poor condition. The photograph obtained by the Respondent through the window of a neighbour's property shows the rear roof in poor condition, with missing and slipped slates and the rear edge in disrepair. On inspection, the mortar at the end of the roof was cracked and falling away. The rear roof will plainly be difficult to access

and is likely to need substantial repair work even if it does not need to be replaced. The Respondent's estimate was not supported by any written evidence and does not appear remotely realistic. Based on the evidence produced by the parties, we are satisfied that the total of £11,074.80 is a reasonable estimated cost for substantial roof repair and/or replacement work for this building.

36. However, again, we emphasise that our determination is only of the reasonable estimated cost, not that the costs incurred in replacing both roofs will necessarily have been reasonably incurred. The Applicant may for example wish to arrange for a surveyor to inspect the roof internally, check whether full replacement of both roofs is necessary, advise about such matters as removal of the slates and replacing them with alternative materials (as appears to be proposed by the suppliers; we have nothing to indicate whether this is permissible or enables a lower price because the slates have value, for example) and/or conduct a fresh consultation exercise. We express no view about any such matters and have no evidence to enable us to compare potential costs of inspection, further advice, delay and repair, if that proves to be an option. We note the risk described in the Applicant's evidence that unless they simply proceed with the current lowest estimate from 2019 without further delay the suppliers are likely to add 10% for the increasing costs of construction materials and services.

37. At the hearing, the Respondent said that such substantial costs should be spread to help leaseholders manage costs. We have considered this, but these are repairs, not improvements, with reported leaks. By August 2018, the leaseholders had been warned that roof replacement was being considered. We consider that, particularly with the funds taken from the relevant reserve fund to reduce the immediate cost of the outstanding repair and decoration work, the estimated cost is reasonable and payable, even if we disregard the delay of more than three years since the demand was made. Although half of the estimated cost, £5,537.40, could potentially be payable as an estimated charge, the Applicant had (apparently by mistake, as discussed at the hearing) only demanded £5,037.40, on 9 July 2019. We determine that the **£5,037.40** became payable by 6 August 2019.

Counterclaim

38. The Respondent counterclaimed £12,614.83 for: "*the monies I gave them in the past*", saying: "*…they charged me for jobs that had never been done and I want those payments to be refunded*." The various case documents produced by the Respondent together indicate only the following payments. Even at the hearing, the Respondent could not point to any other sums which would bring these up to the figure she had counterclaimed.

a) In October 2007, £**6,973.12** had been paid by the Respondent's mortgage lender and added to her mortgage account. On 22 August 2006, the Applicant had obtained default Judgment for £6,679.37. The corresponding documents showed that sum was made up of £5,138.87 for external repair and redecoration work (the Respondent said this work was never done), £633.32 for ceiling repairs (the Respondent said the damage had been caused by a party upstairs and she should not have to pay for it) and various sums for interest and costs. The balance of £293.75 was a charge added by the Applicant for serving a section 146 notice and that was paid by the mortgage lender together with the Judgment debt.

b) In July 2009, up to £**3,366.57** had again been paid by the Respondent's mortgage lender (the Respondent asserted that figure had been paid, based on her copy of a historic statement of account from the Applicant, but the mortgage lender's statement suggests the figure is £3,278.44). The Respondent asserted that £2,808.08 of that sum was made up of duplicate or unfair charges. Based on the documents produced, the payment appears to have included £1,401.19 for which a new default Judgment had been given on 30 December 2008. That appears likely to have been for historic service charges from 1 January 2008 of £1,347.02 and interest to Judgment, with the Respondent adding post-Judgment interest to arrive at the £55.25 figure shown the relevant statement of account for interest. The balance appears to be made up of costs of £177 (the default Judgement is for £1,401.19 plus £177), a charge of £300 for a further section 146 notice, rent of £50 (the lower rate payable at that time under the lease), £414.80 as "historic arrears charges", £22.50 as an "arrears collection charge" (£2,366.57), with a subsequent unexplained entry of £1,000 referring to legal fees (it is not clear whether this is a payment of legal costs or a partial refund).

c) Two payments of £**75** each, which on the evidence produced are likely to be administration charges added by the Respondent's mortgage lender for dealing with these matters to preserve their security.

39. In relation to both Judgments and applications to her mortgage lender, the Respondent said she had not received the county court papers at the time because they had not been sent to her correspondence address, so she had discovered the relevant matters only after she received mortgage statements after the payments had been made.

40. We are satisfied that it is necessary and appropriate for us to determine the matters the subject of the counterclaim in order to determine what service charges are payable. We accept Mrs Coleman's submission that

the Respondent's counterclaim is time barred under the Limitation Act 1980. The Respondent had no answer to this. If the Applicant had any cause of action in relation to any of the matters to which she referred, it would have accrued more than 12 years ago (even if that longer time limit applies). The Respondent had discovered from her mortgage statements at the relevant times that the relevant payments had been made. Even if that is not a complete answer and it might be possible to show that the Respondent is entitled to any sum which could be set off against the service charges otherwise payable, the Respondent has failed to do so. For the reasons summarised below, her claims do not stand up to scrutiny. It is convenient to take these in reverse order.

41. We are not satisfied that there could be any claim or set-off against the Applicant in relation to the two £75 administration charges from the mortgage lender, or the £3,366.57 paid in 2009. If the Respondent wanted to apply to set aside the default Judgment and/or claim or apply for determination of any costs she needed to do so at the time, but gave no reasons why she had not. The Respondent claimed that the rent of £50 and the costs of £177 had been paid twice, but her documents gave no evidence of this. On the contrary, it is probable that the £50 rent payment had fallen due since the relevant proceedings were issued and was made as part of the payment from the mortgage lender. Similarly, the statement of account refers to the underlying service charge sum for which Judgment had been given plus the additional interest and the £177. The balance, which is essentially for costs totalling less than £1,800, is substantial relative to the Judgment debt. However, the Respondent produced nothing to show that it would not have been payable under clause 3(ix) of the lease (set out above). Again, if the Respondent wished to seek to challenge any of these charges, she needed to do so at the time. The Respondent produced no evidence to suggest that any of these costs, in relation to whatever was done between the Judgment in December 2008 and payment in July 2009, were irrecoverable or unreasonable.

42. As for the payment in 2007, the Respondent produced what appears to be her copy from 2005 of the specification and estimates obtained for the exterior repair and redecoration work then proposed. The Respondent attempted to dispute some of the items in these estimates as unreasonable, but her argument was that the works had not been carried out after they had been paid for in 2007. The 2005 specification includes the type of general repair and redecoration provided for in the proposals from 2015/16, but also includes specific items for cutting out defective areas of window sills, inserting reinforcing and repairing, taking up a "*defective and uneven tiled front path*", investigating and rectifying a "*defect to mains water supply*" and reinstating, and repairing the roof.

43. The witness statement dated June 2020 from Lawrence Karumazondo said he lived at the Property with his wife from 1 September 2005 to November 2019 and had never seen anyone repairing the exterior or

interior of the building. He had said in an earlier statement (from May 2017) that "*About a few years ago*" someone was painting the wall at the front, but the communal hallway had not been painted or repaired since they moved in, and they had called someone on one occasion to cut the trees in the front garden. Mrs Karumazonda attended to give oral evidence because her husband was not available on the day of the hearing; she confirmed the contents of his statements. She had no comments about the condition of the property when they had moved in. She had not seen any work being carried out and did not remember when the front wall had been painted. The Respondent also relied on a letter from a Mr F McCarthy, which says he had been the leaseholder of 14A Rayleigh Avenue since 1998 and had not seen any works being done to the roof, guttering or fencing at 12/12A Rayleigh Avenue. The Respondent also produced a letter from the leaseholders of the upstairs flat, saying that since 2015, when they moved in, the Applicant had "*not repaired or service anything*".

44. The Applicant had no remaining records to indicate what was done after the funds were collected from the Respondent in 2007, but said small repairs to the roof had been carried out in 2011. Their current agents were part of their group, but had only taken over management in 2009, from an external firm of agents. We give weight to the evidence, particularly from Mrs Karumazondo, that no substantial works had been observed since September 2005, which is consistent with the Respondent's assertion that no roof works had been carried out in 2011.

45. However, while we cannot assess from our inspection in 2023 whether any or all of the work planned in June 2005 has been carried out, it is likely that at least some was. The Respondent could not explain why she had not pressed the Applicant to carry out works in 2007/2008 after the payment had been made, but she told us she thought the Applicant would be carrying out these works "*gradually*". Mr Karumazondo had already acknowledged that some redecoration work (painting, at least) was carried out a few years before 2017. Other work is likely to have been carried out unnoticed or when tenants were away. It seems likely that work to repair the front path and resolve the "defect" with the water supply were carried out. Only limited tiling and no defects to the front path were apparent on inspection and there was no suggestion from anyone of any continuing water supply problem. It is also likely that basic repair work (reinstating missing slates and the like) was carried out to the front roof, as the Applicant said. The front roof appears in significantly better condition than the roof at the rear, and would be relatively quick and easy to access from the street.

46. We have nothing to indicate what else the funds collected in 2007 may have been spent on, but there is no evidence to suggest that they have not been properly accounted for. It seems likely that they were kept in the "repair and redecoration reserve fund" and used to pay for such items as noted above, leaving a remainder which is sufficient for the

Applicant to allocate £1,800 from that reserve fund toward the costs of the current proposed repair and redecoration works.

47. Accordingly, we are not satisfied that the Respondent has any right to claim or set off any sum in relation to the payment in 2007 of the default Judgment from 2006, whether that was the £5,138.87 for external repairs and redecoration or the £663 for ceiling repair. Nor, for the same reasons as those given above in relation to the charges added to the default Judgment in 2009, are we satisfied that the Respondent has any right to claim or set off any sum in relation to the charge of £293.75 paid in 2007.

Observations

48. In this case, to avoid any risk of a wasteful dispute about whether I should sit as a Judge of the county court to dispose of the remaining issues in these proceedings without a specific provision in the transfer order authorising this, I decided not to seek to do so, but we have endeavoured to make this decision as comprehensive as possible.

49. The tribunal cannot advise, but the parties are encouraged to co-operate with each other to resolve the remaining issues in these proceedings and in future. The Respondent was suspicious about the history, but her arguments about this were too little and far too late. She had some good questions but had already been given helpful explanations in correspondence from the Applicant and relied too much on argument which was not borne out by the evidence. If there are disputes about future service charges, the Respondent may wish to consider making appropriate payments under protest and applying to the tribunal to determine the amounts actually payable. Refusing to make service charge payments claimed under a lease risks proceedings in contemplation of forfeiture and claims for legal costs which are high relative to the service charges involved. That seems already to have happened twice in the past and it will be for the county court to decide whether any legal costs are payable in relation to the proceedings in the county court.

50. In any event, we suggest that the Respondent should investigate and make any necessary arrangements without delay to remedy the mould complained of by her tenant and noted in the front room of the flat.

Name: Judge David Wyatt **Date:** 3 March 2023

Rights of appeal

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

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

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

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

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

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