



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

- Case Reference** : CHI/43UB/LSC/2022/0074
- Property** : Flat 1, 8 Bridge Road
East Molesey
Surrey, KT8 9HA
- Applicant** : Mrs Fiona Monica Scott
- Respondent** : Ms Runsheng Yang And Dr X. Deng
- Type of Application** : Determination of Service Charges under
Section 27A .Costs applications for Orders
under S.20C Landlord and Tenant Act
1985 (The Act) and under Para 5A of Sch
11 to Commonhold and leasehold Reform
Act 2002
- Tribunal Member(s)** : Judge Tildesley OBE
Ms C Barton MRICS
Ms T Wong
- Date and Venue of
Hearing** : 1 February 2023
Havant Justice Centre
- Date of Decision** : Oral Decision given on 1 February 2023
Written Reasons on 14 March 2023

DECISION

Summary of the Tribunal's Decision

1. Apportionment of Service Charges

1.1. The Tribunal decides that

1.1.1. A proper and reasonable contribution of one third in respect of the Landlord's costs of the Building. These costs are shared between the two residential leaseholders and the leaseholder of the retail unit.

1.1.2. A proper and reasonable contribution of one half in respect of the Landlord's costs of the Common Parts. These costs are shared between the two residential leaseholders.

2. The Applicant's liability to pay the service charges for the years ended years ending 2 November 2017 to 12 September 2023.

2.1. The Tribunal determines that the Applicant is liable to pay £2,168.80 as her contribution to the service charges in respect of the Building for the period 2016/2017 to 2022/2023. The Applicant accepted liability to pay 50 per cent of the electricity charges for the Communal Parts in the sum of £1,257.78 for the period 3 November 2016 to 7 April 2022 which is in addition to the sum of £2,168.80.

2.2. The Tribunal concludes on the balance of probabilities that the amount outstanding for which the Applicant is liable to pay in respect of service charge and ground rent for the period 2016/17 to 2022/23 is £1,028.21 (£2,168.80 + £700 (Ground Rent) - £1,840.59).

3. Whether the Respondents have met the statutory requirements in respect of demands for service charges and the service charge machinery in the lease?

3.1. The Tribunal is satisfied that the Respondents did not comply with the statutory requirements in respect of demands for service charges. Thus the Applicant is not liable to pay the amount outstanding in respect of the service charges until the Respondents comply with the statutory requirements for demands.

3.2. The Tribunal finds that the Respondents did not implement the provisions of the Lease regarding the mechanics for collecting service charges. The Tribunal is satisfied that the Respondents are required to issue a Certificate within the meaning of clause 7.17 before they can demand the balance owing in service charges at the end of each service charge year. A Certificate is not required for service charges on account.

4. Whether the Applicant is entitled to set off costs of surveys and repairs arising from alleged breach of the Respondents' repairing covenants under the lease?

4.1. The Tribunal declines jurisdiction and determines that the dispute is best dealt with by the Courts.

5. Section 20C of the 1985 Act and Paragraph 5A Schedule 11 of the 2002 Act

5.1. The Tribunal finds it is just and equitable to make the Orders under section 20C and paragraph 5A preventing the Respondents from recovering the costs of the proceedings through the service charge and against the Applicant.

6. Reimbursement of Fees and Costs

6.1. The Tribunal Orders the Respondents to reimburse the Applicant with the £300 paid in Tribunal fees within 28 days from date of this decision.

Background

1. On 27 June 2022 the Applicant applied for determination of liability to pay service charges for the years ending 2 November 2017 to 2 November 2022 pursuant to section 27A of the Landlord and Tenant Act 1985 (“1985 Act”).
2. The Applicant also applied for Orders under section 20C of the 1985 Act and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 1985 preventing the Landlord from recovering the costs of the proceedings through the service charge and/or against the leaseholder.
3. On 13 October 2022 the Tribunal directed that the Application was suitable to be heard on the papers and required the parties to exchange their statements of case.
4. On 8 November 2022 the Respondents sent a statement of case and accompanying documents to the Tribunal which did not comply with directions. The submissions were emailed out of time and sent to the Tribunal as opposed to the Applicant as directed and were not copied to the Applicant.
5. On 29 November 2022 the Applicant applied to bar the Respondents from taking part in the proceedings and requested an oral hearing in view of the volume of evidence received.
6. On 3 December 2022 the Tribunal refused the Applicant’s application to bar the Respondents on the grounds that such information would be required by the Tribunal in order to make a determination on the Applicant’s application and that the Applicant was likely to need to rely on such information in support of her application.
7. The Tribunal set down the Application for an oral hearing and invited the parties to provide available dates. The Respondents offered no dates. The Respondents stated that they lived in China and had no intention of visiting the United Kingdom. The Tribunal advised the Respondents that they may appoint an agent to represent them at the hearing. The Tribunal noted that China had not approved the giving of video evidence from within its territory. The Respondents did not appoint an agent.
8. The hearing was held on 1 February 2023 at Havant Justice Centre. The Applicant attended in person with her husband. The Applicant supplied the hearing bundle which had been sent to the Respondents and had included their detailed statement of case. The Respondents did not attend the hearing. The Tribunal was satisfied that the Respondents had been notified of the hearing and it was in the interests of justice to proceed in the absence of the Respondents. In reaching this decision the Tribunal noted that the disputed issues which were within its

jurisdiction were based largely on agreed facts, and that the Respondents had supplied a detailed statement of case. The Tribunal announced its decision at the end of the hearing.

9. References to the documents in the bundle referred to in this decision are in [].

The Property

10. The property is an end terrace arranged over two floors and built in the 19th century. The property is of traditional construction of brick and slate roof. The photograph of the property at [46] showed the glass frontage of the retail unit on the ground floor, with the first floor finished in mock Tudor style of stucco timber.
11. The Tribunal understands that around 2014 the property was converted into three units with a retail unit and a residential flat on the ground floor. A residential flat occupied the whole of the first floor.
12. The floor plan of the property at [44] showed the retail unit at the front of the ground floor roughly occupying about 50 per cent of the floor space. On the Eastern side or on the left looking from the front is an enclosed communal hall which is accessed off the porch area entering into the retail unit.
13. The communal hall leads to the ground floor studio flat (Flat 1) opening into a kitchen dining area with a three piece shower room off on the right. The door from the kitchen /dining area opens into a bed sitting room with a door to the right into a courtyard. The Applicant believed that Flat 1 formed part of an extension to the original building.
14. Access to the first floor flat (Flat 2) is gained by means of stairs rising from the communal hall. Flat 2 comprises a living room, two bedrooms, kitchen dining area, bathroom and a roof terrace.

The Lease

15. The Applicant is the owner of Flat 1 by virtue of a lease dated 5 January 2015, and made between Graham Hunt of the one part and the Applicant of the other part for a term of 125 years from and including 24 June 2015 to and including 23 June 2139. This is in return for a rent of £100 per annum rising every 25 years to £2,000 for the remainder of the term after 100 years, and further and additional rent to the Landlord the Service Charge and the Interim Service Charge on the dates and at the times specified in the lease.
16. The Definitions include the following which is of relevance to the dispute:

"Building" means the land and building which is shown on the Plan 1 and known as 8 Bridge Road East Molesey, Surrey KT8

9HA and registered at the Land Registry under Title Number SY352918 and shown edged blue on the Plan.

“Common Parts” means the common entrance doors halls staircases passages lift and landings and other parts in the Building which are used in common, by the Flat and the owners or occupiers of the Other Flat in the Building.

"Interim service charge" means the sum payable in accordance with the definition in Clause 5.2.

"service charge" means the sum payable in accordance with the definition in Clause 5.1.

17. Clause 5 provides as follows:

The Tenant covenants with the Landlord as follows:-

5.1 To pay and contribute a proper and reasonable share of all sums expended by the Landlord in complying with its covenants in relation to the Building under Clause 7 hereof (“the Service Charge”).

5.2 To pay in advance to the Landlord or its Surveyor or Agent for the time being by four equal instalments on the 25th day of March, 24th day of June the 29th September and the 25th day of December in every year of the Term such sum as the Landlord may from time to time by written notice require ("the interim Service Charge") on account of the Tenant's liability under Clause 5.1 for the Service Charge in respect of such part of the costs charges and expenses of the Landlord as shall be reasonably considered by the Landlord to be of a regular and recurring or irregular nature (as to which the Surveyor or Agent of the Landlord shall be the sole judge) the first proportionate part of such payment from the date hereof to the next succeeding date for payment to be made on the date hereof.

5.3 To pay to the Landlord within fourteen days after service by the Landlord on the Tenant of a certificate in accordance with Clause 7.19 the balance by which the interim Service Charges (if any) paid by the Tenant to the Landlord falls short of the total Service Charge due from and payable by the Tenant for the period to which the certificate relates provided that any overpayment of interim Service Charges for such period shall be credited against future payments due from the Tenant to the Landlord in respect of Service Charge.

5.4 If any of the sums which are required to be paid by the Tenant in accordance with the sub-clauses 5.1, 5.2 and 5.3 shall not be paid within twenty-one days after they shall become due then the same shall forthwith be recoverable by action and shall

carry interest from the date on which the same became payable until the date of payment by the Tenant.

18. The relevant parts of Clause 7 are as follows

7.1 To repair renew repoint rebuild or otherwise treat as necessary the main structural parts of the Building specifically referred to in this clause (except to the extent that an obligation is imposed upon the Tenant by virtue of any sub-clause to clause 4 or a similar obligation is imposed or to be imposed upon any lessee in any sub-clause to clause 4 of the lease of the Other Flat) including the foundations internal structural and external walls and timbers the roofs the whole of any balcony (including the railings thereof but excluding the wooden flooring of such balcony (if any)) and external walls the external surfaces of the window frames all Service Installations (not exclusively serving the Flat nor exclusively serving the Other Flat individually) and to keep the same in good and tenantable repair and condition throughout the Term.

7.3 To keep the Common Parts (including one half in width of the inside walls separating the Common Parts from the Flat or from the Other Flat demised to the other lessees in the Building) in good and tenantable repair and condition throughout the Term.

7.5 To keep all footpaths and Common Parts so far as practicable properly cleaned and reasonably lighted and to keep properly cleaned as far as practicable the internal faces of the windows within the Common Parts.

7.17 To employ such persons as shall be reasonably necessary for the due performance of the covenants on its part herein contained and for the proper management of the Building including a qualified accountant for the purpose of auditing the accounts each year in respect of service charges and certifying the total amount thereof for the period to which the account relates.

7.18 To keep or cause to be kept proper books of account of all costs charges and expenses incurred by the Landlord in carrying out its obligations herein contained and of all contributions received by the Landlord or its surveyors or agents for the time being from the Tenant or the lessees of the Other Flat in the Building in accordance with the covenants in that behalf contained in their respective leases and to produce to the Tenant as soon as reasonably practicable the accountant's certificate referred to in Clause 7.17.

7.20 At all times during the Term (unless such insurance shall be vitiated by any act or default of the Tenant or any of the other persons referred to in Clause 4.24) to insure and keep insured the Building (including the Flat) in the names of the Landlord (with the interests of the Tenant and the Tenant's mortgagee (if any) and those of the lessee of the Other Flat and their mortgagees noted thereon) against loss or damage by the Insured Risks in the full reinstatement cost thereof (inclusive of the cost of demolition and clearance of buildings Architects and Surveyors and any statutory fees) and against property owners and occupiers liability in such insurance office of repute as the Landlord may nominate and from time to time direct and upon request (but not more than once in any year) to produce to the Tenant a true copy or copies of the policy or policies of such insurance or of a certificate of such insurance giving details of the terms and conditions thereof and the receipt for the last premium for the same (or other satisfactory evidence of payment) and will in the event of the Building or any part thereof being damaged or destroyed by any Insured Risk (and subject to the provisions of Clause 4.25 hereof) as soon as reasonably practicable apply the insurance monies payable in respect thereof in the repair rebuilding and reinstatement of the Building in good and substantial manner and to the reasonable satisfaction of the Landlord or their respective Surveyor or Architect for the time being provided that if the money receivable under any such insurance shall be insufficient to meet the cost of the necessary works of repair rebuilding or reinstatement then the deficiency shall be treated as a further item of Service Charge expense and recoverable from the Tenant and the lessee of the Other Flat accordingly.

19. The Applicant supplied a copy of the lease for the retail unit on the ground floor. This is made between the Respondents of the One part and Green and Lovely of the other part and dated 9 March 2022.

20. The clauses in this lease that are relevant for this dispute are as follows

1(g) **“Building”** means 8 Bridge Road, East Molesey KT8 9HA of which the Property forms part and which at the date of this lease is registered at the Land Registry with title number SY352918.

3 **Insurance Rent** and paying as further rent sums equal to one third share of the premiums from time to time expended by the Landlord in effecting and maintaining insurance of the Building in accordance with the obligations of the Landlord in Clause 5 hereof (including any uninsured excess) such sums to be paid on the first day of the month next following the demand therefor.

Shared facilities

(6) (a) Without prejudice to the generality of any other covenant by the Tenant to contribute a fair proportion according to use of the cost of repairing maintaining lighting cleansing and renewing all party walls party structures and yards gardens ways sewers drains pipes conduits and wires used by the occupier of the Property in common with the occupier of any other property (if any) such fair proportion in the absence of agreement between the Landlord and the Tenant to be determined by the Landlord's surveyor.

(b) To contribute the sum equal to one third of the cost from time to time expended by the Landlord in repairing and maintaining the Building in accordance with the obligations of the Landlord in clause 5(5) hereof.

Repair

(5) To keep the Building (other than the Property except in the case of the structure) in good and substantial repair.

The Issues

21. The Tribunal identified the following issues to be determined:
 - a) The Applicant's liability to pay the service charges for the years ended years ending 2 November 2017 to 12 September 2023.
 - b) Whether the Respondent has met the statutory requirements in respect of demands for service charges and the service charge machinery in the lease?
 - c) Whether the Applicant is entitled to set off costs of surveys and repairs arising from alleged breach of the Respondents' repairing covenants under the lease?

The Applicant's liability to pay the service charges for the years ended years ending 2 November 2017 to 12 September 2023.

The Parties' Submissions

22. The Applicant accepted that she was liable to pay service charges under the lease. The Applicant did not dispute that the Respondents had incurred costs which could be recovered as a service charge, and the reasonableness of those costs. The Applicant's dispute concerned her share of the costs. The Applicant accepted that she was liable to pay 50 per cent of the costs incurred in maintaining and keeping lighted the Common Parts of the property because they were solely for the benefit of the two residential leaseholders of the property. In this regard the only costs that had been incurred on the Common Parts of the property during the period in dispute related to the electricity used in keeping the Common parts lighted which the Applicant had paid.
23. The Applicant's dispute concerned her contribution to the costs of the Building which related primarily to the costs of insurance and minor

repairs. The Applicant argued that it was not reasonable to contribute 50 per cent of those costs. The Applicant stated that these costs should be shared amongst the three leaseholders of the property which included the tenant of the retail unit. The Applicant further argued that the contribution of each leaseholder to the Landlord's costs should be equivalent to the proportion that the square area of the leaseholder's unit bears to the total square area of the property. The Applicant suggested that such a calculation would result in a 25 per cent contribution for Flat 1 which was significantly smaller in size than Flat 2. The Applicant offered a contribution of one third as a compromise solution.

24. The Respondents purchased the freehold of the property in November 2016. The Respondents initially engaged Urang Property Management as agent to manage the property but since the resignation of the agent the Respondents have managed the property themselves.
25. The Respondents said that the Applicant had tried all kinds of methods to dispute the Lease terms and had refused to pay the service charge in full. The Respondents stated that the Applicant had requested for several years that the service charge (including insurance premium and maintenance cost) should be split into three proportions, that is, Flat 1, Flat 2 and the retail shop. The Respondents have resisted this because they say it was contrary to the terms of the residential leases which make no mention of the retail unit.
26. The Respondents produced a witness statement dated 10 November 2022 from Mr Garnier, the previous Tenant of the retail unit who stated that

“From March 2001 until January 2021. I can also confirm that at no time were we requested to pay for any utilities, insurance or maintenance costs for the so called communal area i.e. the ground floor hallway, therefore no lease agreements made any reference to these costs”.

Consideration

27. Under Clause 5.1 of the lease the Applicant is liable to contribute a **proper and reasonable share** of all sums expended by the Respondents in complying with the Landlords covenants under Clause 7 of the Lease. The Tribunal has jurisdiction under section 27A of the 1985 Act to determine what constitutes a proper and reasonable share as part and parcel of the statutory protection given to residential tenants in respect of service charges.
28. The starting point for deciding what constitutes a proper and reasonable share is to determine what costs the Landlord can recover under Clause 7 of the Lease. Essentially the Landlord can recover those costs expended on the Building and those that are expended separately on the Common Parts. Under the definition clause in the Lease the

Building is the property identified by the freehold title registered under Title Number SY352918, and by definition includes the two residential flats and the retail unit. In contrast the Common Parts are confined to those parts of the building which are shared and used by the residential owners of the two Flats.

29. It follows from the above analysis that it is reasonable and fair for the two residential leaseholders and the tenant of the retail unit to contribute towards the costs incurred by the Landlord on the Building and for the two residential leaseholders only to be responsible for the costs incurred by the Landlord on the Common Parts.
30. The Tribunal does not have jurisdiction to determine the contribution that the Tenant of the retail unit must make towards the Landlord's costs for the Building. The Tribunal, however, is entitled to assume when calculating the residential leaseholders' proportion of the costs for the Building that the Landlord would recover some of those costs from the Tenant of the retail unit.
31. The facts showed that the Tenant under the current lease for the retail unit was liable to pay one third of the costs incurred by the Respondents in taking out insurance for the Building and one third of the Respondents' costs for maintaining the Building. The witness statement of the previous Tenant of the retail unit [464] was silent on the contribution to the costs of the Building and only covered the costs of the Common Parts which are the liability of the residential leaseholders. The Tribunal took into account that the Respondents in their invoice for the service charge for the year ended 2 September 2023 had demanded a one third contribution from the Applicant in respect of the Building costs rather than a 50 per cent contribution was in the previous invoices.
32. The Tribunal concludes that a proportion of one third would amount to the Applicant's proper and reasonable share of the Landlord's costs incurred on the Building. In the Tribunal's view there is no justification for splitting these costs 50:50 between the residential leaseholders because the Tenant of the retail unit benefits from the insurance and the maintenance for the Building.
33. The Tribunal acknowledges that there is a case for calculating the proportion paid by each leaseholder on the basis of the square area of their respective flat or retail unit. However, there is no hard and fast rule for calculating the apportionment of service charges between the leaseholders. It may be fixed by the lease but if not as in this case the Tribunal must have regard to all the circumstances of the particular case in determining whether the proportion is proper and reasonable. In this instance and having regard to the terms of the lease for the retail unit the Tribunal considers that a contribution of one third represents a proper and reasonable share of the costs incurred by the Landlord on the Building.

34. The Applicant accepted that 50 per cent was a proper and reasonable share of the Landlord's costs incurred on the Common Parts. The Tribunal is obliged to treat the Applicant's acceptance as an admission and is not entitled to substitute a different proportion from the 50:50 split.
35. The Tribunal, therefore, decides that
- a) A proper and reasonable contribution of one third in respect of the Landlord's costs of the Building.
 - b) A proper and reasonable contribution of one half in respect of the Landlord's costs of the Common Parts.
36. The Tribunal turns now to the service charges demanded. In this regard the Tribunal relies on the invoices issued by the Respondent and exhibited at [351 -356]. The invoices are for the periods: years ended 2 November 2017, 2018, 2019, 2021, and the period 3 November 2021 to 12 September 2022. The Tribunal noted that the Respondents had not supplied an invoice for the period year ended 2 November 2020. The Respondents also supplied an invoice for the period 13 September 2022 to 12 September 2023 [357] and an invoice for the costs of electricity used for the Common Parts for the period 3 November 2016 to 7 April 2022 [143]. The Tribunal cross referenced the sums demanded in the invoices against the Applicant's summary of the service charge demands (247). The Tribunal finds that there were inconsistencies between the two sets of documents in respect of the insurance demanded, and the periods for which the insurance costs related to. The Tribunal decided to apply the figures demanded in the Respondents' invoices in order to arrive at the amount of service charge due from the Applicant.
37. The Tribunal took account of the Applicant's admission that she did not challenge the reasonableness of the amounts demanded, and that the Respondents were entitled to recover the costs for insurance, gutter cleaning and maintenance, and the asbestos management fee as service charges under the lease.
38. The Tribunal sets out below its determination in respect of the Applicant's contribution to the service charges for the Building for the years from 2016/17 to 2022/23. The Tribunal applied its decision that the Applicant was liable to contribute one third of the costs of the Building.

Service Charge Year	Amount (£) Demanded	Tribunal's Determination (£)
S Charge Y end 2.11.17		Applicant's Contrib 33.3%
Insurance	1,068.00	356.00
Total Y end 2.11.17	1,068.00	356.00
S Charge Y end 2.11.18		
Insurance	1,048.00	349.33
Gutter Cleaning	100.00	33.34
Total Y end 2.11.18	1,148.00	382.67
S Charge Y end 2.11.19		
Insurance	1,107.18	369.06
Gutter Cleaning	250.00	83.34
Total Y end 2.11.19	1357.18	452.40
S Charge Y end 2.11.21		
Insurance	700.83	233.61
Management Fee	50.00	50.00
Total Y end 2.11.21	750.83	283.61
S Charge Y end 2.09.22		
Insurance	637.97	212.66
Asbestos Management Fee	276.00	92.00
Management Fee	50.00	50.00
Total Y end 2.11.22	963.97	354.66
S Charge Y end 2.9.23		
Insurance	898.37	299.46
Management fee	40.00	40.00
Total Y end 2.9.23	938.37	339.46

39. The invoices incorporated a demand for ground rent which is not a matter within the Tribunal's jurisdiction. The Tribunal has not included the ground rent in its determination. The Tribunal finds that the Applicant understands that she has a liability to pay the Ground Rent of £100 per annum which is in addition to the amounts demanded in respect of the service charges. The Applicant said that she had made payments towards the ground rent.
40. The above table does not include the Respondent's invoice for electricity charges in respect of the communal hall in the sum of £1,257.78 for the period 3 November 2016 to 7 April 2022 which was issued in June 2022. The Applicant admitted liability for 50 per cent of the costs (£624.41) and paid the sum due despite the fact that some of the debt may have been caught by the 18 month time limit in section 20B of the 1985 Act.
41. The Applicant accepts liability to pay the management charge which she considered to be an administration charge to cover the costs of the invoices and the collection of the payments. The Applicant did not submit that the management charge should be apportioned between

the other leaseholders. The Tribunal is obliged to accept the Applicant's admission.

42. The Tribunal, therefore, finds in respect of the service charges for the Building for the periods 2016/17 to 2022/23 the following:

Service charge year	Total service charge £	Applicant's Contribution £
2016/2017	1,068.00	356.00
2017/2018	1,148.00	382.67
2018/2019	1357.18	452.40
2019/2020	No service charge demanded	
2020/2021	750.83	283.61
2021/2022	963.97	354.66
2022/2023	938.37	339.46
Total		2,168.80

43. The Tribunal determines that the Applicant is liable to pay £2,168.80 as her contribution to the service charges in respect of the Building for the period 2016/2017 to 2022/2023. The Applicant accepted liability to pay 50 per cent of the electricity charges for the Communal Parts in the sum of £1,257.78 for the period 3 November 2016 to 7 April 2022 which is in addition to the sum of £2,168.80.
44. The Applicant stated that she made the following payments to the Respondents and their agent: to Urang Property Management on 30/09/2019, £562.75; to the Respondents on 1/03/2022, £1023.39; on 2/3/22 £62.50; on 7/6/22 £192.00; and on 29/6/22 £624.41 [248]. The Respondents agreed the amounts paid except for the payment of £562.75 to Urang Property Management [316]. The Tribunal holds that the Applicant was a truthful witness, and finds that her record of payments was correct. Thus the sum paid by the Applicant was £2,465.00 which included the £624.41 for the electricity. This means that the Applicant has paid £1,840.59 towards the service charge liability of £2,168.80 spanning seven years from 2016/17 to 2022/23. The Tribunal, however, observes that the sum paid by the Applicant would have included sums of money to discharge her liability to pay the ground rent of £100 per annum for the seven years in question.
45. The Tribunal concludes on the balance of probabilities that the amount outstanding for which the Applicant is liable to pay in respect of service charge and ground rent for the period 2016/17 to 2022/23 is £1,028.21 (£2,168.80 + £700 (Ground Rent) - £1,840.59).

Whether the Respondents have met the statutory requirements in respect of demands for service charges and the service charge machinery in the lease?

46. The Tribunal starts with the statutory requirements for demands for service charges. Pursuant to section 47 of the Landlord and Tenant Act 1987 any demand for sums due to the landlord of a dwelling must state the name and address of the landlord. If the landlord fails to comply with section 47 of the 1987 Act, the tenants are not liable to pay the service charges or administration charges until such time as the landlord issues the correct demand compliant with section 47.
47. Pursuant to section 21B of the 1985 Act, a demand for the payment of a service charge must also be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. For premises in England the form and content of that summary can be found in regulation 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. If the landlord fails to comply with section 21B, the tenants are not liable to pay the service charges until such time the Landlord sends the Notice.
48. Finally section 166(1) of the Commonhold and Leasehold Reform Act 2002 provides that a tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has first given a notice relating to the payment and the date on which the tenant is liable to make payment is that specified in the notice. The notice must be in the prescribed form. That date must not be less than 30 days or more than 60 days after the day on which the notice is given, nor before the date on which the tenant would have been liable to make it in accordance with the lease. "Rent" does not include a service charge within the meaning of section 18(1) of the 1985 Act.
49. In this case the Respondents sent an invoice to the Applicant for the payment of the ground rent and for service charges. The invoice was not in the prescribed form for the demand of ground rent. Although the following statement cannot form part of its decision, the Tribunal observes that the ground rent is not payable by the Applicant until the requirements of section 166(1) are met.
50. The invoice contained the name of the Respondents and an address in England. The invoice did not specify that the Respondents were the landlord and the address to which notices to the Landlord could be sent. Further there was no evidence that the Respondents had sent to the Applicant a statement of tenant's rights and obligations in accordance with section 21B of the 1987.
51. The Tribunal is satisfied that the Respondents did not comply with the statutory requirements in respect of demands for service charges. Thus the Applicant is not liable to pay the amount outstanding in respect of

the service charges until the Respondents comply with the statutory requirements for demands.

52. Turning next to the provisions of the Lease which deal with the machinery for the collection of service charges. Clause 5.2 enables the Landlord to collect interim service charges on account at each of the four quarter days in the year (25 March, 24 June, 29 September and 25 December) by equal instalments. At the end of the accounting year (24 March in any one year) the Landlord should produce a certificate showing the actual costs expended on service charges and the amount already paid by the Tenant. If the amount paid by the Tenant in interim service charges is less than the actual amount of the service charge for the year in question, the Tenant is required to pay the balance within 14 days of the service of the certificate. If the amount is more than the actual service charge, the Landlord is required to credit the difference to the Tenant's account.
53. Clause 7.17 enables the Landlord to employ a qualified accountant for the purposes of auditing the accounts each year in respect of service charges and for certifying the total amount of service charge for the period to which the account relates. Clause 7.18 requires the Landlord to keep proper books of account and to provide the Tenant with the Certificate referred to in clause 7.17 as soon as reasonably practicable.
54. The Tribunal finds that the Respondents did not implement the provisions of the Lease regarding the mechanics for collecting service charges. The Tribunal is satisfied that the Respondents are required to issue a Certificate within the meaning of clause 7.17 before they can demand the balance owing in service charges at the end of each service charge year. A Certificate is not required for service charges on account.

Whether the Applicant is entitled to set off costs of surveys and repairs arising from alleged breach of the Respondents' repairing covenants under the lease?

55. The Applicant contended that she was entitled to set off the following sums which she said had been incurred because of the Respondents' failure to carry out essential repairs to the Building:
 - Payments made for surveys by Tapco and Prokill 01/22 (£324.00).
 - Payment made to repair guttering 18/6/22 (£165.00).
 - 50 per cent deposit paid to Tapco in relation to structural works due to rising damp 07/22 (£2094.00).
 - Payment of parking waiver for Tapco vehicle (£37.00).
 - Final account to Tapco on end of works 09/22 (£1626.00).
 - Purchase of paint for repair to skirting boards - (£34.96).
 - Purchase of paint for treating fresh plaster on walls (£54.96).
 - Payment for painting of room following damp proofing works 09/22 (£100.00).

- Payment for repairs to guttering 11/22 (£60.00).
 - Payment for urgent external repairs 11/22 (£255.00).
56. The Respondents argued that they were not liable to pay the sums due and that some of the repairs fell within the Applicant's repairing liabilities under the lease.
57. The Tribunal has no jurisdiction to determine whether the Landlord has breached its covenant to repair under the Lease. This is a matter that falls within the Court's jurisdiction. The Tribunal, however is permitted to consider whether a breach of the Landlord's covenant to repair would give rise to a claim for damages which could potentially be set off against the service charges demanded (see the Lands Tribunal decision in *Continental Property Ventures Inc v White* [2007] L.& T.R.4). The Tribunal in exercising its discretion to hear a potential claim for set off should consider the nature of the issues involved and whether it is more appropriate to be dealt with by the Courts. In this case the Applicant's claim for damages is not directly related to the service charges demanded, and exceeds that amount owing under service charges. Further the Respondents deny that they are in breach of their repairing covenants under the lease. Given those circumstances the Tribunal declines jurisdiction and determines that the dispute is best dealt with by the Courts.

Section 20C of the 1985 Act and Paragraph 5A Schedule 11 of the 2002 Act

58. The Applicant applied for Orders under section 20C of the 1985 Act and paragraph 5A of schedule 11 of the 2002 Act preventing the Respondents from recovering their costs of the proceedings from being recovered through the service charge and against the Applicant direct. The Tribunal has found in favour of the Applicant who was successful with her principal application concerning the apportionment of service charges in respect of the costs incurred on the Building. In those circumstances the Tribunal finds it is just and equitable to make the Orders under section 20C and paragraph 5A preventing the Respondents from recovering the costs of the proceedings through the service charge and against the Applicant.

Reimbursement of Fees and Costs

59. The Applicant requested reimbursement of Tribunal fees of £300 from the Respondents. The Tribunal is given discretion to make such an Order under Rule 13(2) of the Tribunal Procedure Rules 2013. The Tribunal considers such an Order appropriate in view the Applicant's success with her application. The Tribunal Orders the Respondents to reimburse the Applicant with the £300 paid in Tribunal fees within 28 days from date of this decision.
60. The Applicant asked for her costs of £137.17 in preparing the bundle. The Tribunal explained that it had limited powers to Order one party to

pay the costs of the other party and could only do so if the other party had acted unreasonably in the conduct of the proceedings in accordance with rule 13(1)(b) of the Tribunal Procedure Rules 2013. The Tribunal advised the Applicant that if she wished to make an application she must do so in writing within 28 days from the date of this decision and send it to the Respondents and the Tribunal. The Applicant must set out her reasons for stating that the Respondents acted unreasonably. The Tribunal draws the parties' attention to the Upper Tribunal case in *Willow Court Management Company Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC).

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.