



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

Case Reference : CAM/11UF/LIS/2023/0001

Property : 1 St Dunstons Court, 113 Totteridge Road,
High Wycombe HP13 6EY

Applicant : Luke Hennah

Represented by : In person

Respondents : Lisa Real Estate Ltd

Represented by : Andrew Beaumont, counsel.

Application : Application, pursuant to s27A of the Landlord & Tenant Act 1985, to
determine the liability to pay and reasonableness of service charges
and administration charges.

Tribunal Members : Judge Stephen Reeder
Roland Thomas MRICS

Date of hearing : 20 June 2023 convened remotely by CVP platform

Date of Decision : 20 June 2023

Date Written : 30 June 2023

DECISION

DECISION

1. The tribunal determines that the following sums are payable and reasonable as service charges –

2020

Buildings insurance @ £1802.26
Repairs and maintenance @ £900
Garden maintenance @ £800
Cleaning @ £350
Window cleaning @ £480
Electricity @ £240
Reserve fund @ £350
Auditing and accountancy @ £175
Management fee @ £1260

2021

Buildings insurance @ £1802.26
General repairs and maintenance @ £258
Gardening @ £660
Cleaning and caretaking @ £350
Window cleaning @ £85
Electricity @ £1538
Emergency light testing @ £210
Fire risk assessment @ £240
Health & safety risk assessment @ £240
Accountancy fees @ £544
Client money protection @ £12
Management fee @ £1911

2022

Buildings insurance @ £1802.26
General repairs and maintenance @ £1,380
Gardening and ground maintenance @ £846
Cleaning and caretaking @ £342
Window cleaning @ £255
Electricity @ £961
Emergency light testing @ £210
Fire risk assessment @ £240
Health & safety risk assessment @ £240
Accountancy @ £676
Client money protection @ £20
Management fee @ £2006.55

2. In accordance with the lease the applicant's due proportion payable as his individual service charge is 15% of those costs.

3. The tribunal determines that the lease, and in particular covenants 5.10 and/or 7.3.19 and/or 7.3.20 as relied upon by the respondent, do not entitle the respondent to recover its costs in relation to these tribunal proceedings under the lease.
4. The applicant has paid both an issue fee of £100 and a hearing fee of £200. Having regard to *Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*, and to the tribunal's determinations and the outcome of the proceedings, the tribunal does not make an order directing the respondent to re-imburse those costs.
5. In considering whether to exercise its power to make any party costs order the Tribunal has careful regard to *section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013* read against the overriding objective in Rule 3 of the 2013 Rules and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. Having regard to the tribunal's determinations, the outcome of the application and the conduct of the parties the tribunal does not make any party costs order.

REASONS

The application, the property & the parties

6. The application is brought pursuant to s27A of the Landlord & Tenant Act 1985 to determine the liability to pay and the reasonableness of service charges and administration charges demanded in respect of 1 St Dunstan's Court, 113 Totteridge Road, High Wycombe HP13 6EY ('the property').
7. The property is a two-bedroom flat in a Victorian house ('the building') that has been converted to provide seven flats. The applicant's flat is situated on the ground floor with neighbouring flats on the ground, first and second (top) floors.
8. The building has a small garden to the Totteridge Road boundary largely laid to grass, small paths to the left-hand flank and to the Lucas Road boundary laid to gravel, an entrance courtyard garden largely laid to paving and gravel, together with a car park providing 7 spaces.
9. Lisa Real Estate Ltd has been the landlord throughout the relevant period. The building was managed by Praxis Block Management between 01.01.2020 and 15.09.2020. Since 16.09.2020 it has been managed by Blue Property Management.
10. The application relates to the accounting years 2020-2022 inclusive. For each of those years it challenges the reasonableness of several service charge components as identified later in this Decision.
11. The applicant and tenant of the property is Luke Hennah (hereafter 'the applicant').
12. The respondent landlord demanding the relevant service charges is Lisa Real Estate Ltd (hereafter 'the respondent').

The procedural history

13. Judge Hardman made a directions order on 8 March 2023.
14. That order directed the Applicant to file with the tribunal and serve on the respondent his statement of case, a completed version of the annexed 'Scott' schedule, copies of any alternative quotes, any witness statements relied upon, any brief supplementary response, and to file an indexed hearing bundle.
15. That order directed the Respondent to file and serve its completed version of the annexed 'Scott' schedule, its statement of case, and any witness statements relied upon.
16. The tribunal convened a remote video hearing by CVP (cloud video platform) on 20 June 2023. Neither party requested an in-person hearing in response to the directions order. Having regard to the issues raised and evidence and information filed on the application the tribunal is satisfied that the remote video hearing is an appropriate and proportionate procedure to determine these proceedings. Neither party requested an inspection of the property or the building in which it is located. The tribunal is satisfied that an inspection was not necessary in order to determine the issues raised in the application. The tribunal made its determinations on 20 June 2023.

The matters in issue

17. The written application on standard form leasehold 3 includes the service charge accounting year 2019. The directions order made on 8 March 2023 did not include 2019. As a result, the parties have not adequately addressed 2019 in their respective evidence. In the circumstances it is agreed that the tribunal will not consider 2019.
18. The service charge figures for the 2023 accounting are the forecasted budget and not the certificated relevant costs. The lease makes provision for the demand of a payment on account (clause 7.2.6) subject to year-end adjustments and final account (clause 7.2.8) with certified expenses (paragraph 7.2.1). In the circumstances it is agreed that the tribunal will not consider 2023.
19. The written application on standard form leasehold 3 therefore challenges those identified service charges for the accounting years 2020-2022 inclusive.
20. Some of the sums included in the written application on standard form leasehold 3 differ from the final charges certified in the final service charge account. The tribunal has considered those final charges.
21. The challenge is to the reasonableness of the sums demanded having regard to the nature and quality of the services provided. Liability to pay the service charge as relevant costs under the lease is not challenged.

The hearing

22. The applicant, Luke Hennah, has represented himself. The Respondent has been represented by Andrew Beaumont, barrister. He was accompanied by Catherine Bateman (head of legal for Blue Properties) and Jason Popplewell (Blue Properties property manager responsible for the building).

23. In response to Judge Harman's directions order dated 8 March 2023 the tribunal has been provided with an indexed documents bundle comprising 1130 pages. The tribunal has had careful regard to the documents filed in that bundle. During the hearing has had particular regard to the following documents (adopting the pagination of the bundle). The application in pro forma leasehold 3 form [3-47]. The statement of Luke Hennah dated 14.04.2023 [351-354]. The statement of Miroslav Kulas dated 14.04.2023 [355-356]. Service charge provision summaries signed by the tenants in the building [357-363]. The respondent's statement of case dated 28.04.2023 [365-370]. The statement of Jason Popplewell [372-374]. The income & expenditure accounts and invoices [475-788]. The 'scott schedule' completed for both Applicant and Respondent [376-405]. The lease for the property [412-442].
24. At the request of the parties the tribunal heard oral evidence from the applicant, Luke Hennah, and from the Blue Properties property manager responsible for the building, Jason Popplewell

The lease

25. The tribunal is provided with a copy of the lease in respect of the property. That lease includes a number of provisions of particular relevance to the issues before the tribunal.
26. Clause 1 provides particulars, and clause 1.4 states the service charge percentage to be 15%. Clause 2 provides definitions and clause 2.12 states the service charge is the service charge percentage of the expenses. Clause 2.1 defines the St Dunstan's Court building which includes the applicant's demise and all of the flats demised. Clause 2.4 defines the estate which includes the building. Clause 2.2 defines the common parts of the estate.
27. Clause 5 and Schedule 5 set out the tenant's covenants. Clause 5.17 requires the tenant to observe his obligations in respect of service charge and service as set out in Schedule 7. Clause 7.2.5 requires the tenant to pay his service charge percentage of the expenses.
28. Clause 6 and Schedules 6 and 7 set out the landlord's covenants. Clause 7.1.4 provides that the service charge will be calculated as the costs and expenditure, including all charges, commissions, premiums, fees and interest, paid or incurred or deemed in accordance with paragraph 7.2.3 to be paid or incurred by the landlord in respect or incidental to all or any of the services or otherwise required to be taken into account for the purposes of calculating the service charge, except where such cost and expenditure is recovered from any insurance policy effected by the landlord.
29. Clause 7.3 defines the services to include decorating repairing replacing and renewing retained parts and car parking spaces, providing operating maintaining repairing and renewing plant, placing and running maintenance contracts for the estate, providing refuse facilities, providing reasonable lighting to internal and external common parts, cleaning windows, maintaining fixtures fittings and equipment, carrying out inspections and tests of the retained parts and the plant the company from time to time considers is necessary or desirable, planting tidying tending and landscaping common parts, providing replacing and renewing trees shrubs flowers grass and other plants in the grounds of the estate.
30. Clause 7.3.13 includes as a service the costs of employing persons in connection with providing any of the services. Clause 7.3.16 includes the costs of administering and managing the building, performing the services, preparing statements or certificates of expenses and auditing expenses.
31. Schedule 8 sets out the landlord's covenant to insure and permits the use of such insurance offices or underwriters or agents as the landlord decides (paragraph 8.2.1). The covenant requires the landlord to effect insurance for the sum that the landlord is advised by an independent surveyor is

the full cost of rebuilding and reinstating the estate, including VAT, architects, surveyors, engineers, solicitors and all other professionals' fees, together with any fees payable for permissions, permits and consents, together with the costs of site clearance and preparation (paragraph 8.2.2.1). The covenant requires the landlord to effect insurance against damage or destruction by any of the insured risks to the extent that such insurance may ordinarily be arranged for properties such as the estate subject to such excesses, exclusions or limitations as insurer required.

32. In interpreting the lease the tribunal has careful regard to the decision of the Upper Tribunal in *Arnold v Britton* [2015] AC 1619 and so directs itself to the natural and ordinary meaning of lease clauses under consideration, the other relevant provisions in the lease, the overall purpose of the clause, the related provisions, the lease as a whole, and further has regard to the facts and circumstances known or assumed by the parties at the time the lease was executed, and to commercial common-sense (disregarding any subjective evidence of any party's intentions).
33. The tribunal determines that each of the relevant costs which are recharged as service charges by the respondent are within the scope of the leasehold provisions and so are payable as service charge under the lease. The tribunal notes that the applicant, both in his application and in earlier pre-application correspondence, did not challenge his liability to pay service charges for relevant costs incurred and clearly identified that his challenge was to the reasonableness of the sums demanded as not being commensurate with the services delivered.

The law

34. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter 'the LTA 1985') sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which is payable.

35. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.
36. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.
37. Section 20C LTA 1985 sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides jurisdiction for the Tribunal to make an

order to reduce or extinguish the tenant's' liability to pay an administration charge in respect of litigation costs.

38. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter 'CLARA 2002') sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –

An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to--

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

39. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

Discussion and determinations

Preliminary issue – the admission of late evidence

40. The respondent has requested permission to adduce late evidence consisting of documentation which it argues will support its contention that the service charges are reasonable. Mr Beaumont submits that the respondent only recently identified that the materials were not included in the hearing bundle. He further submits they are essential for the tribunal to make a proper determination. The applicant objects to this request. He argues that they were served late on the afternoon immediately preceding the hearing and whilst he was at work. He argues that they are so late that he is unable to adequately analyse and respond to them. He points out that they are documents in the control of the respondent which were not disclosed in accordance with the tribunal's directions order and so not included in the hearing bundle.

41. As a proportionate use of the available time tribunal heard the respective submissions and took time for discussion and determination and gave its decision on the issue with reasons to follow in this written decision.

42. This evidence was filed and served by email at 4.38pm on the day before the hearing. It comprises 40 pages. The applicant responded by email at 22.18pm after his day at work. He is, and was known by the respondent to be, acting in person. The respondent gave no forewarning of this request to him. It provides no explanation why the materials were not included in the disclosure provided to him earlier, other than that it may have failed to properly check the hearing bundle earlier. The tribunal considers this conduct is procedurally unfair to the applicant and results in a real prospect of substantive unfairness.

43. Permission to adduce and rely upon this evidence is made by oral request at the outset of the hearing following an email request filing the documents outside of business hours on the day before the hearing. The directions order made by Judge Hardman on 8 March 2023 required the service charge accounts to be disclosed by 27 March 2023 and the supporting invoices and documents to be disclosed by 2 May 2023. There was no application for an extension of time. There is no adequate explanation as to why the respondent failed to disclose these documents by 2 May 2023. There is no adequate explanation why it took the respondent between 2 May 2023 and 19 June 2023 to disclose the documents it now seeks to adduce and rely upon as evidence. The tribunal considers that there is no reasonable explanation for the failure to comply with the tribunal's directions, or for the delay in making an application to seek to correct that failure until beyond business hours on the day immediately before the listed hearing.
44. The substantive issue for determination by the tribunal is about the reasonableness of the service charge when considered against the service delivered. There is a substantial existing body of evidence which has been disclosed in accordance with the directions order, included in the hearing bundle, and addressed by the parties in their evidence which goes to this issue. Accordingly, the tribunal does not accept the respondent's submission that the late evidence is essential in order to reach a proper determination.
45. For these reasons the tribunal refuses the respondent's request to adduce and rely upon the late evidence.

2020 accounting year

46. The building was managed by Praxis Block Management between 01.01.2020 and 15.09.2020. Since 16.09.2020 it has been managed by Blue Property Management. Mr Popplewell accepted in terms that when Blue Property Management took over St Dunstan's Court was "unkept" and that it certainly could have been better managed by Praxis. He further states there were little or no funds available to begin an improved service until the first quarter of 2021. That description is not challenged. That description corresponds with the applicant's evidence and with the photographs and correspondence in the hearing bundle.

Insurance

47. The demand in relation to buildings insurance (24.06.20-23.06.21) is £4035.15. The applicant argues that this is an unreasonably high cost for such insurance. He points to the fact that in the 2022 accounting year the cost was £1552.56 with an additional £250 excess (£1,802.26 in total). and that this illustrates the cost which could be achieved from the market for the same risk cover. He further relies upon a quotation from Praxis based on what he asserts is the same or similar risk cover for a £984.16. The tribunal considers this quotation with some caution as it is not clear that the cover, reservations and exclusions are the same as those for the policy adopted and paid for as a relevant cost by the respondent landlord. He has also produced a quote for £1339.41 which appears to have been procured during pre-application correspondence by the landlord's agent Citygate in October 2020. The tribunal considers that this should be given more weight as a comparator as it can reasonably be assumed that the landlord will have provided the same rebuilding valuation and risk criteria as it has done to secure the insurance accepted, paid for and recharged as a relevant cost. The respondent landlord argues that the relevant cost incurred and resulting service charge is reasonable as it was arrived at by an arms-length procedure of going to the market by specialist broker. It perfectly properly relies upon the decision in *Sinclair Gardens Investments (Kensington) Ltd v Avon Estates* [2016] UKUT 317 (LC) in support of the argument that it is not obliged to obtain the least expensive policy in the market and that factors such as

rebuilding valuation, and the scope and terms of the cover and risk criteria including claims history will and should be reflected in any quotation if it is to be a worthwhile comparator.

48. The tribunal considers that the applicant's argument is well made. It follows from this that the rebuilding valuation, the scope and terms of the cover and the risk criteria including claims history disclosed for the later years which resulted in a relevant cost of £1,802.26 are likely to have been materially the same. The Applicant has not argued or established otherwise. The tribunal, applying its expert knowledge, cannot identify any other macro market or economic circumstances which would cause a material change in that position. The tribunal determines that the relevant cost which is reasonable and payable as a service charge in respect of insurance is £1,802.26 for the 2020 accounting year.

Repairs and maintenance

49. Repairs and maintenance costs are charged in the sum of £900. The applicant resides in his flat and so gave direct evidence of the state of the building and communal areas. His evidence is borne out by the photographs in the hearing bundle which show a basic standard of repair and maintenance. The applicant advocates for a more reactive and comprehensive repair and maintenance service delivering a higher quality of outcome. He is entitled to do so, but the service charge levied for 2020 is in respect of the actual costs incurred for the actual service delivered. This is detailed in the written statement and to a degree the oral evidence of Jason Popplewell. The relevant costs are certified by the accounts. The level and quality of service is commensurate with the cost incurred. The tribunal determines that the service charge which is reasonable and payable is that which is demanded, being £900.

Garden maintenance

50. Garden maintenance costs are charged in the sum of £1400. The applicant states that in the preceding months there were approximately 5 visits prior to Blue Property Management taking over in the September. He describes the work done as lawn mowing and leaf blowing and little else. There is no evidence before us to contradict this description. Simple tick box questionnaires completed by other lessees variously describe the gardening service delivered as 'average', 'poor' or 'very poor'. The tribunal treats those documents with some caution given that the makers did not give evidence and so those answers could not be analysed with them. The specification for the service to be delivered is not known. The required frequency and duration of visits is not known. By contrast, the tribunal notes that after its appointment Blue Property Management engaged Messrs Weedgone Garden Maintenance Limited on the basis of a single page written specification requiring grass cutting, lawn treatment, lawn edging, hedge trimming, weedkiller application, and clearing of hardstanding areas. The contracted fee is £792 per year. The tribunal considers that the specification contracted for is basic but reasonable having regard to the 'site' and that the resulting fee is reasonable for such a service. The tribunal considers that such a service and a resulting fee approximating that figure could have been achieved for 2020. The tribunal determines that the service charge which is reasonable and payable is £800.

Cleaning

51. Cleaning costs are charged in the sum of £850. This relates to the communal areas comprising an entrance, hallway, staircase and store cupboards. Those areas and the poor state of cleanliness achieved is clear from the photographs in the hearing bundles. The applicant states that in the preceding months there were approximately 5 visits prior to Blue Property Management taking over in the September, with none thereafter. The respondent repeats that when Blue Property Management took over as managing agents for St Dunstan's Court in September 2020 there were little or no funds available to begin an improved service until the first quarter of 2021 and that it is not challenged. The applicant describes the service as the attendance of 2 people who vacuumed,

dusted and wiped with cloths. He states that the carpet was not cleaned. The applicant argues that a reasonable cost for cleaning the common areas would be a bi-monthly visit by two people for 1 hour costing £15 per person with an administration fee resulting in a total cost of £150 per annum, and relies upon an internet search for “the local price in High Wycombe for indoor cleaning services”. The respondent reminds the tribunal that £850 was the actual cost incurred for 2020. The tribunal considers that the communal areas are not extensive but do include stairs and different levels and will inevitably require some hard work as they provide access for a number of households and their visitors with the resulting regular footfall in the communal areas. It is accepted by all that the current cleaning specification does not include a deep clean or carpet cleaning but is for regular cyclical cleaning. The tribunal considers that the market price offering is the key comparator and applying its knowledge and experience as best it can the tribunal determines that a bi-monthly cleaning rota for 2 people to clean these communal areas for 2 hours on each visit can be achieved for £350 per annum. The tribunal is fortified in that determination when noting that the current managing agent has been able to achieve a similar cost in the market for later years.

Window cleaning

52. Window cleaning costs are charged in the sum of £480. The applicant challenged this on the basis that Praxis property management had previously recharged £360. The applicant argued that only 4 visits per year of 2 hours duration on each occasion are needed. The respondent simply states that this is the cost incurred for the service. The tribunal notes that St Dunstan’s Court is a Victorian house converted to provide seven flats situated on the ground, first and second (top) floors. It has approximately 30 windows located in various places across the 3 storeys. The tribunal considers that an annual charge of £480 per annum for a quarterly visit of 2 hours duration is reasonable having regard to the St Dunstan’s ‘site’ and the number and location of the windows. The tribunal determines that the service charge which is reasonable and payable is £480.

Electricity

53. The electricity charge of £240 relates to the supply to the 10 lights in the external and car parking areas, 2 heaters in the internal communal areas and 6-8 lights in the internal communal areas. In the event this charge has not been challenged. The tribunal determines that the service charge which is reasonable and payable is £240.

Reserve fund

54. The contribution to the reserve fund of £350 is not challenged. Such a fund and contribution is clearly provided for in the lease. It is a typical and sensible management tool to accrue funds toward necessary works. The tribunal determines that the service charge which is reasonable and payable is £350.

Auditing and accountancy

55. The auditing and accountancy charge of £175 is clearly provided for in the lease. The reasonableness of the sum charged is not challenged. The tribunal note that this charge is well under the market rate for such work and determines that the service charge which is reasonable and payable is £175.

Management fee

56. The management fee charged for 2020 is £1260. This equates to £180 per flat per year. St Dunstan’s Court is a Victorian house converted to provide seven flats situated on the ground, first and second (top) floors. It has some communal areas but they are neither extensive nor unusual in

nature. It has external grounds and a large car park to accommodate seven vehicles. The management service delivered by Praxis Block Management between 01.01.2020 and 15.09.2020 was, on the largely uncontroverted evidence and in the view of the tribunal, poor. Since 16.09.2020 Blue Property Management has started to provide a better service, including properly contracting services at market value and building up a reserve. In evidence the respondent confirmed that Blue Property Management is a member of ARMA and is not a member of RICS but does aim to act in accordance with the RICS guidance. The schedule of management duties agreed between the respondent and Blue Property Management and included in the hearing bundle is concise but comprehensive and includes all necessary services which might reasonably be expected having regard to the leases and to the nature of St Dunstan's Court. Having regard to the lease provisions, to the contents of the management agreement, and to the extent and nature of St Dunstan's Court and its management the tribunal determines that a management charge of £1,820 equating to £260 per flat would be a reasonable management charge. On the evidence the service delivered between January and September 2020 cannot be described as adequate. The tribunal considers that this is adequately reflected in the charge of £1260 (£180 per flat). The tribunal determines that the service charge which is reasonable and payable is £1260.

2021 Accounting year

Buildings insurance

57. The tribunal repeats its reasoning as per the 2020 accounting years and determines that the relevant cost which is reasonable and payable as a service charge in respect of buildings insurance is the sum of £1,802.26 as charged for the 2021 accounting year.

Repairs and maintenance

58. The cost of general repairs and maintenance is recharged as £258. The applicant challenges this on the basis that the only relevant works during that accounting year to his knowledge was the provision of 3 locks on the cupboards in the communal areas. The sum of £258 is that certified by the account. During the hearing Mr Popplewell was able to identify the component contractor invoices which gave rise to that total sum. Mr Popplewell (as the incoming agent) could not positively confirm the described works were actually carried out. The Applicant could not positively confirm they were not. Given the paucity of observational evidence, the tribunal considers that it is reasonable to assume that the contractors only invoiced for work done, that the agent only paid invoices having satisfied itself that the works had been done, and that the invoices were only provided to the accountant on that basis. The tribunal determines that the service charge which is reasonable and payable is £258 as demanded.

Gardening and grounds maintenance

59. Gardening and grounds maintenance costs are charged in the sum of £660. It is challenged on the same grounds as for 2020. The tribunal repeats its reasoning in respect of 2020. The tribunal determines that the service charge which is reasonable and payable is £660 as demanded.

Cleaning and caretaking

60. Cleaning and caretaking costs are charged at £350. It is challenged on the same grounds as for 2020. The tribunal repeats its reasoning as set out for the 2020 accounting year. The tribunal determines that the service charge which is reasonable and payable is £350.

Window cleaning

61. The finalised service charge account certifies the window cleaning costs recharged as £85. This is not challenged by the applicant. The tribunal determines that the service charge which is reasonable and payable is £85 as demanded.

Electricity

62. The cost of electricity is recharged in the sum of £1,538. This is the actual cost as billed and recharged. It is not challenged. The tribunal determines that the service charge which is reasonable and payable is £1,538 as demanded.

Emergency light testing

63. The cost of emergency light testing is charged in the sum of £210. This is the first time such a test has been commissioned following the instruction of the current managing agent. The Applicant accepts that it is a relevant cost reasonably incurred and that the sum is reasonable. His challenge is that the same testing is again carried out and charged for in 2022. The tribunal determines that the service charge which is reasonable and payable is £210 as demanded.

Fire risk assessment

64. The cost of fire risk assessment is charged in the sum of £240. This is the first time such an assessment has been commissioned following the instruction of the current managing agent. The Applicant accepts that it is a relevant cost reasonably incurred and that the sum is reasonable. His challenge is that the same assessment is again carried out and charged for in 2022. The tribunal determines that the service charge which is reasonable and payable is £240 as demanded.

Health and safety risk assessment

65. The cost of health & safety risk assessment is charged in the sum of £240. This is the first time such an assessment has been commissioned following the instruction of the current managing agent. The Applicant accepts that it is a relevant cost reasonably incurred and that the sum is reasonable. His challenge is that the same assessment is again carried out and charged for in 2022. The tribunal determines that the service charge which is reasonable and payable is £240 as demanded.

Accountancy fees

66. Accountancy fees are recharged in the sum of £544. This is the actual sum incurred. The Applicant challenges this on the ground that the accountancy is undertaken by Messrs Blue Accounting UK Limited which is part of the Blue Management group with the managing agent and so wants to be sure that the sum charged provides reasonable value for money. The respondent explained during the hearing how value for money is achieved by reviewing the Blue Accounting fee against local market comparables annually. The tribunal considers that this an adequate check to ensure that the lack of a separate accountant does not result in a lack of value for money. The nature and extent of the accounting process is apparent from the financial statements and final accounts included in the hearing bundle and supports that fee charged. It is not asserted that Messrs Blue Accounting UK Limited is not an appropriately qualified and experienced practice. The tribunal considers that it is permissibly engaged for a fee which is within the reasonable scale for the work necessary to prepare accounts for St Dunstan's Court. The tribunal determines that the sum of £544 demanded is reasonable and payable.

Client money protection

67. The cost of client money protection is charged at £24. The applicant argues that this charge should be included within and accounted for as part of the administration and management charges, in part because this would provide visibility. The tribunal takes a contrary view. The protection is a common and sensible precaution for the client account and reserve fund containing service charge receipts for landlord and lessee arrangements like St Dunstan's Court. It is supported by the governmental and sector guidance. The fact that it is accounted for separately provides visibility. It does not follow that it should be obtained separately, and the parties are reminded of the need to consider the best procedure for going to the market to obtain a reasonable cost for the necessary protection. The resulting charge was not challenged by the applicant. The tribunal determines that the sum of £24 demanded is reasonable and payable.

Condition survey

68. The cost of the estate condition survey is recharged in the sum £1,170. This is the report dated August 2021 and prepared by Fadeel Baurtally, chartered surveyor for Consult Construct Ltd. It is included in the bundle. It was instructed by Blue Property Management Limited. It is an illustration of that agent identifying the need for a comprehensive condition survey to enable a planned repair, works and services programme going forwards. The resulting service charge in the sum of £1,170 is not challenged. The tribunal determines that the sum of £1,170 demanded is reasonable and payable.

Management fee

69. The management fee charged for 2021 is £2,800. The tribunal repeats its reasoning as per the 2020 accounting year. Having regard to the lease provisions, to the contents of the management agreement, and to the extent and nature of St Dunstan's Court and its management, and allowing a 5% annual increase, the tribunal determines that a management charge of £1,911 equating to £273 per flat would be a reasonable management charge.

2022 accounting year

Buildings insurance

70. Building insurance is charged at £1,802.26. This is not challenged. The tribunal repeats its reasoning as per the 2020 and 2021 accounting years and determines that the relevant cost which is reasonable and payable as a service charge in respect of buildings insurance is the sum of £1,802.26 as charged.

Repairs and maintenance

71. The cost of general repairs and maintenance is charged at £1,380. The Applicant's complaint is that the maintenance works and resulting costs should have included investigating the source(s) of dampness remedied in this period so that costs could be recovered under a damp works guarantee from a former lessee (since assigned for a fee). The tribunal does not consider this to be a challenge to the works done and relevant costs incurred and recharged. This is the resulting sum certified in the accounts. It is supported by the invoices in the hearing bundle. The tribunal determines that the sum of £1,380 demanded is reasonable and payable.

Gardening and grounds maintenance

72. Gardening and ground maintenance costs are charged in the sum of £846. The tribunal repeats its reasoning in respect of the earlier accounting years 2020 and 2021 and allows for a 5% increase from the charge for 2021 in line with the market. The resulting figure of £840 is so near to the £846 demanded that, having regard to the reasonable market margin, the tribunal determines that the service charge which is reasonable and payable is the £846 demanded.

Cleaning and caretaking

73. Cleaning and caretaking costs are charged at £342. The tribunal repeats its reasoning as set out for the 2020 and 2021 accounting years. The tribunal determines that the service charge which is reasonable and payable is the £342 demanded.

Window cleaning

74. Window cleaning costs are recharged in the sum of £255. This charge is not challenged. The tribunal determines that the service charge which is reasonable and payable is the £255 demanded.

Electricity

75. Electricity costs are recharged in the sum of £961. This charge is not challenged. The tribunal determines that the service charge which is reasonable and payable is the £961 demanded.

Emergency light testing

76. The cost of emergency light testing is charged at £210. This is the second time such a test has been commissioned following the instruction of the current managing agent, the first being in 2021. The Applicant accepts that the sum is reasonable but contends that the cost is not reasonably incurred as annual tests are not necessary. The respondent contends that annual testing is necessary. The tribunal notes that the guidance advises frequent testing and considers that this may be more or less frequently than annually having regard to the access and egress from demised dwellings, through the building of which they form a part, and through the immediate gardens and grounds to arrive at a safe location. The tribunal has regard to the fact that the applicant's property is a flat in a Victorian house that has been converted to provide seven flats. The applicant's flat is situated on the ground floor. There are neighbouring flats on the ground, first and second (top) floors. It follows that there are seven households with only one route of access and egress which requires people to negotiate floor levels and staircases. The tribunal considers that, having regard to the nature and detail of St Dunstan's Court and the resulting risks to be mitigated by good property management it is reasonable for the landlord to adopt an annual timetable for emergency lighting testing. The tribunal determines that the service charge which is reasonable and payable is the £210 demanded.

Fire risk assessment

77. The cost of fire risk assessment is charged at £240. This is the second time such a test has been commissioned following the instruction of the current managing agent, the first being in 2021. The Applicant accepts that the sum is reasonable but contends that the cost is not reasonably incurred as annual assessments are not necessary. The respondent contends that annual assessment is necessary at this stage, but that less frequent assessments may be possible in the future. For the same reasoning adopted in relation to emergency lighting testing, the tribunal considers that, having regard to the nature and detail of St Dunstan's Court and the resulting risks to be mitigated by good property management it is reasonable for the landlord to adopt an annual timetable for fire risk assessment in 2022. The tribunal determines that the service charge which is reasonable and payable is the £240 demanded. The tribunal notes the respondent's agreement that less frequent

assessments may be possible in the future once the risk and health and safety position is fully analysed and recorded and is static.

Health and safety risk assessment

78. The cost of health & safety risk assessment is charged at £240. This is the second time such an assessment has been commissioned following the instruction of the current managing agent, the first being in 2021. The Applicant contends that the cost is not reasonably incurred as annual assessments are not necessary and that the cost may not be reasonable. The respondent contends that annual assessment is necessary at this stage, but that less frequent assessments may be possible in the future. It further contends that the cost is reasonable for the assessment and report provided. For the same reasoning adopted in relation to emergency lighting testing, the tribunal considers that, having regard to the nature and detail of St Dunstan's Court and the resulting risks to be mitigated by good property management it is reasonable for the landlord to adopt an annual timetable for health and safety risk assessment in 2022. The tribunal notes the respondent's agreement that less frequent assessments may be possible in the future once the risk and health and safety position is fully analysed and recorded and is static. The assessment report is in the documents bundle has been considered in detail during the hearing led by Mr Thomas MRICS as the valuer member. He explored with the parties why the assessment was necessary in addition to cyclical property inspections by the managing agent, how market value for money was achieved, and the need for the assessor to be of suitable accreditation within the RICS and AVMA guidance. Having regard to those discussions the tribunal considers that the cost of £240 is reasonable. The tribunal determines that the service charge which is reasonable and payable is the £240 demanded.

Accountancy

79. The charge for accountancy is £676. The tribunal repeats its reasoning in relation to the 2021 accounting year and notes that in 2022 the new managing agent was fully engaged and active in meeting the immediate and initial needs of managing St Dunstan's court and in planning for its future structured and cyclical needs. The increased accounting needs and resulting cost are reflected in the increase in costs between 2021 and 2022. The tribunal determines that the service charge which is reasonable and payable is the £676 demanded.

Client money protection

80. The costs of client money protection is recharged in the sum of £20. The tribunal repeats its reasoning set out in relation to 2021 and determines that the service charge which is reasonable and payable is the £20 demanded.

Management fee

81. The management fee charged for 2022 is £2310 (£330 per flat). The tribunal repeats its reasoning as per the 2020 and 2021 accounting years. Having regard to the lease provisions, to the contents of the management agreement, and to the extent and nature of St Dunstan's Court and its management, and allowing a 5% annual increase, the tribunal determines that a management charge of £2006.55 equating to £286.65 per flat would be a reasonable management charge.

Fees and Costs

82. The Respondent seeks its costs in relation to this application and contends that liability under the lease is fixed by covenants 5.10 and/or 7.3.19 and/or 7.3.20. The tribunal has considered each provision with care.

- a. Covenant 5.10 relates to tenant applications for any consent or licence required under the lease, to the contemplation and preparation and service of notices and proceedings pursuant to ss146,147 LPA 1925, any steps taken in relation to a schedule of delapidations, and the recovery of arrears of rent or other sums due under the lease. The tribunal does not consider that this covenant does not entitle the respondent to recover its costs in relation to these tribunal proceedings under the lease.
 - b. Covenant 7.3.19 relates to landlord steps taken to complying or dealing with statutory or other notices, regulations, orders of government departments or local public or regulatory or other authorities or courts, compliance with which is not part of the direct liability of the tenant or of any tenant of the estate. The tribunal does not consider that this covenant does not entitle the respondent to recover its costs in relation to these tribunal proceedings under the lease.
 - c. Covenant 7.3.20 relates the cost of any service or matter which the landlord acting reasonably thinks proper for the better and more efficient management of the estate and the comfort and convenience of its occupants. The current tribunal proceedings are not such a service or matter. The tribunal does not consider that this covenant does not entitle the respondent to recover its costs in relation to these tribunal proceedings under the lease.
83. Whilst St Dunstan's Court was managed by Praxis Block Management between 01.01.2020 and 15.09.2020 the service delivered was poor and the estate "unkept". That poor service resulted in their being replaced by Blue Property Management in September 2020. Understandably, Blue Property Management have found it challenging to adequately respond to lessee enquiries and complaints and to evidence relevant costs and service charge demands given the state of affairs they inherited. That is the fault of both the previous managing agent but also the respondent landlord. The full information requested by the applicant and other lessees, which they were entitled to, has only now been provided as a result of the preparatory steps for these proceedings. In the event, whilst some of the service charges demanded have been subject to reduction by determination some have not. The quantum of those reduced stands against the quantum of those affirmed as reasonable. For these reasons the tribunal makes the following orders.
84. The application includes an application pursuant to s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 which reduces or extinguishes the tenant's liability to pay an administration charge in respect of litigation costs as contractual costs under the lease. The application specifies other tenants in respect of whom the order is sought : Tanya Goodman (flat 3), Rachel Hartwell (flat 4), Tom Smart & Lucy Maitre (flat 5), Miro Kulas (flat 6) and Maya Stanislawska (flat 7). Were it necessary, having regard to the tribunal's determinations and the outcome of the proceedings, the tribunal would make an order pursuant to s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to extinguish the lessees' liability to pay a service or administration charge in respect of litigation costs as contractual costs under the lease.
85. The applicant has paid both an issue fee of £100 and a hearing fee of £200. Having regard to *Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*, and to the tribunal's determinations and the outcome of the proceedings, the tribunal does not make an order directing the respondent to re-imburse those costs.
86. In considering whether to exercise its power to make any party costs order the Tribunal has careful regard to *section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013* read against the overriding objective in Rule 3 of the 2013 Rules and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. Having regard to the

tribunal's determinations, the outcome of the application and the conduct of the parties the tribunal does not make any party costs order.

Delay in issuing written decision

87. There has been undue delay in issuing this Decision to the parties. This is entirely due to an administrative oversight on my part to send it to the tribunal office. No fault lies with my fellow tribunal member or with the tribunal administration. Apologies are offered to the parties for that oversight and the resulting delay.

Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

30 June 2023

Re dated for issue 3 January 2024

ANNEX - RIGHTS OF APPEAL

- a. **This annex notifies the parties of any right of appeal pursuant to Rule 36(2) of the (First-tier Tribunal) (Property Chamber) Rules 2013.**
- b. **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.**
- c. **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.**
- d. **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.**
- e. **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.**
- f. **If the tribunal refuses permission to appeal then a further application for permission may be made to the Upper Tribunal (Lands Chamber).**