FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/26UK/LIS/2023/0006**
Property	**:**	**2 Heronsfield House, Old Shire Lane, Chorleywood, WD3 5PW**
Applicant	**:**	**Miss Caroline Powell**
Respondent Landlord	**:**	**Heronsfield House Ltd**
Represented by	**:**	**Mrs Yvonne Murrihy**
Type of application	**:**	**Application for payability and reasonableness of service charges, pursuant to s.27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Tribunal Judge Stephen Evans** **Mrs Sarah Redmond MRICS**
Date of hearing	**:**	**26 March 2024**
Date of decision	**:**	**22 April 2024**

DECISION

The Tribunal determines that:

(1) All relevant costs challenged by the Applicant are reasonably incurred and reasonable in amount, with the exception of:

- **(a) Cost of clock (£34.75, which was never charged to leaseholders);**
- **(b) Front door lock costs (£30.59 and £117.79 – Applicant's share £24.73);**
- **(c) Cleaning cost; whilst the cost was reasonably incurred, a reasonable amount for 3 months is £300 (Applicant's share £50);**
- **(d) Damp treatment (£350, Applicant's share £58.33);**

(2) The Applicant's share of the costs for 2023 onwards are not payable unless and until a valid demand is made (without prejudice to any other argument which may be made);

(3) By agreement, the Applicant is entitled to a set-off of £132 for repairs occasioned by the Respondent's breach of covenant;

(4) The application by the Applicant under s.20C of the Landlord and Tenant Act 1985 is granted. No relevant costs in relation to this s.27A application may be recovered from the Applicant through the service charges;

(5) The Respondent shall reimburse the Applicant £150 in respect of her Tribunal application and hearing fees.

REASONS

Background

1. On 1 April 1977 a Lease was granted by Curlew Housing Society Limited to Gibney and Gibney in respect of flat B (now called Flat 2), Heronsfield House, Old Shire Lane, Chorleywood, WD3 which is hereinafter called "the Property", for a term of 99 years from 25 March 1977.

2. The Property consists of a 2 bedroom flat in a building converted into 6 units.

3. By clause 2(3) of the Lease, the tenant covenants to repair the interior of the Property, including the windows and the doors, such as the front entrance door.

4. By clause 2(16) the tenant covenants to pay the landlord a service charge of 1/6 of the landlord's annual management fee and all money expended by the landlord in compliance with the landlord's covenants under clause 3.

5. The landlord's covenants are contained in clause 3 of the Lease and include the repair of the structure and roofs to the building, and the cleaning of the halls passages stairs etc. But the covenants in clause 3 do not stretch to making any improvements.

6. By clause 7 of the Lease, s.196 of the Law of Property Act 1925 is incorporated into the Lease.

7. On 25 February 2018 directors were appointed to the Respondent landlord, namely Mrs Murrihy and Mr Kenny Neale. At some stage they were joined by the Applicant herself.

8. Draft service charge statements were prepared for the year ending 31 March 2019, and these were sent to all Leaseholders on 20 June 2019, together with a budget for the year 2020. This was despite the service charge year under the Lease being the calendar year.

9. On 23 June 2019 a meeting took place in the Applicant's Property, attended by all Leaseholders of the 6 flats in the building. There was an agreement reached that service charge interim payments should be made in advance to the Respondent in the monthly sum of £140, starting from 1 August 2019. This resolution (whether made formally or informally) was passed unanimously. There was also an agreement that there should be a refurbishment of the entrance hall and common parts of the building, by majority of 5 flats to 1; and it was left to Mr Neale to organise it. No discussion took place, it seems, concerning how much should be spent on this facelift.

10. On 23 June 2019 accounts for the year ending 31 March 2019 were prepared.

11. The Applicant continued to make service charge payments, but after falling out with Mr Neale over an issue concerning cats, the Applicant ceased her service charge monthly payments after 4 October 2021.

12. On 18 October 2021 the Applicant began to query the service charge expenditure of the Respondent.

13. On 31 October 2021 the Applicant wrote to the Respondent indicating that she was withholding service charge payments.

14. On 21 November 2021 the Applicant again wrote to the Respondent, this time to say that her service charge payments had stopped because of the pets dispute.

15. On 13 December 2021 the Respondent’s solicitors wrote to the Applicant with a “cease and desist” letter, alleging that her complaints were becoming too vociferous.

16. Mr Davern of Flat 3 resigned as company secretary on 21 April 2022, on account of the acrimony between the Applicant and the Respondent.

17. On 27 June 2022 the Applicant resigned as director of the Respondent company, and the next day Mr Davern resumed his position as company secretary.

18. On 30 June 2022 the Applicant purported to send a request under section 22 of the Landlord And Tenant Act 1987 for copies of invoices in relation to the landlord's service charge expenditure. The Notice was served to Kenneth Neale and Yvonne Murrihy. Mr Neale's response to this request was to state that his name was Kenny, and it had to be correctly stated on the notice before he would answer any request.

19. The Applicant gained advice from the organisation Lease, and on 28 December 2022 she made a second request under section 22 of the above Act.

20. On 22 February 2023 she sent a third request under the Act.

21. At about the same time she put the Property on the market for sale.

22. On 6 March 2023 the Applicant made the instant application to the Tribunal.

23. On or about 27 April 2023 the local council, Three Rivers DC, became involved, and wrote to the Respondent in relation to its alleged failure to comply with the requests made under section 22 of the Act. In the event, they later wrote to indicate that their stance was that they were not proposing to take any action whilst the present Application was before the Tribunal.

24. Nevertheless, the Applicant continued to ask the Respondent for service charge invoices and details of accounts, on both 10 May 2023 and 7 June 2023.

25. On 3 July 2023 the Tribunal made directions, but extensions of time for compliance had to be made.

26. On 8 August 2023 the Respondent replied to the Applicant's conveyancing solicitor, enclosing a leasehold enquiries LPE1 form, which alleged that the Applicant was in arrears of service charge in the sum of £3480 excluding interest due under the Lease.

27. The parties have exchanged documents and evidence, but the procedural path has not been smooth, with various complaints to the Tribunal and cross complaints of non-compliance with directions.

Relevant Law

28. See Appendix 1 to this decision.

The Hearing

29. The hearing was attended by the Applicant, and by Mr Neale of flat 6, Mr Davern of flat 3, Mrs Murrihy of flat 5 and an observer, Mrs Peabody.

30. The Tribunal ascertained that, despite directions for joinder, no other person had applied to be joined, and the Applicant was the sole Applicant in the proceedings.

31. The Tribunal took some time establishing agreement between the parties that the Applicant had paid (by way of her monthly interim service charge payments of £140 up to October 2021) all her due proportion of the items on pages 42 to 46 of the bundle, being the Scott Schedule items in dispute for the years 2021 and 2022; but that she had not paid for any of the items of expenditure on pages 47 onwards of the bundle, being the Scott Schedule items in dispute for the years 2023 and 2024.

32. The Respondent revealed that, as far as it was concerned, it had always been the case that the service charge year had been based on the financial year, but the Applicant stated that her understanding it was the calendar year.

33. The Tribunal also established that the 2020 accounts were not in the bundle, although the parties agreed that these had been signed off and sent to all Leaseholders.

34. The Applicant insisted that she had never seen any accounts for the years ending 2021 to 2023, despite request. The Respondent disagreed, but in any event the Tribunal was left in a position whereby the only accounts in the bundle were for the year ending March 2019, and these were company accounts, not service charge accounts in the true sense.

35. The Tribunal then proceeded to hear representations from both parties, and evidence was called in relation to the Scott Schedule items. As may be seen below, these can be grouped together to a certain degree, since representations were identical in relation to several of the items.

36. The Applicant withdrew her challenge to the following items during the course of the hearing:

    (1) 2022: 2 framed birds (art for communal hallway): £24
    (2) 2022: interest on non-payment of service charges (unquantified);
    (3) 2023: : interest on non-payment of service charges (unquantified);
    (4) 2024: both items on the Scott Schedule (unquantified).

Discussion and Determination

2021: Bespoke window blinds for communal hallway (£1476.32) – p.42

2021: Art framing (£300) – p.42

2022: Mirror for communal hallway (£49.99)- p.43

2022: Clock for communal hallway (£34.75) – p.43

2022: 2 framed birds -art for communal hallway – (£200)- p.44

2022: World Map - art for communal hallway (£89.95)- p.45

2022: Rugs for communal hallway (£95.97) – p.45

2022 –Fitting of rugs in communal hallway (£77) -p.45

37. All the above concern items expenditure by the Respondent in relation to the refurbishment of the communal hallway.

38. The Applicant's arguments in the Scott Schedule, expanded in oral representations, are:

    (1) No estimates were provided;
    (2) No service charge was demanded;
    (3) 18 month time bar applies (s.20B Landlord and Tenant Act 1985)
    (4) Lease does not include any improvement clause.

39. The Respondent counters this with the following:

    (1) Aside from the World Map and rugs, the Applicant had all the necessary receipts by 6 December 2021 at the latest; in relation to the Map and rugs/fitting, these invoices were sent to the Applicant on 25 and 14 March 2022 respectively;

    (2) There had been no request for any service charge accounts;

    (3) The communal area refurbishment was agreed on 23 June 2019;

    (4) The clock cost was not charged to the leaseholders.

40. Dealing first with the argument that the above items were all improvements, and do not fall within the express terms of clause 3 of the Lease, the Tribunal agrees that the written Lease terms do not expressly cover these items. However, the Tribunal considers that the parties had agreed a one-off variation of the Lease terms on 23 June 2019, so as to allow a refurbishment of the communal hallway by way of improvement, with the items to be chosen and provided at the reasonable discretion of the Respondent (in particular by Mr Neale who had a number of contacts with various contractors); but to be paid through the service charges by the leaseholders in accordance with their due proportions.

41. We accept that the blinds and detail of artwork was not specifically mentioned at this meeting, but the blinds replaced curtains which were very shabby, the Respondent argued (and the Applicant did not disagree). The artwork was to

replace 2 painted herons in the hallway, which all but one of the Leaseholders were prepared to consign to history.

42. The Applicant rightly pointed out that fitting was not necessary in respect of any rugs. It was only when Mr Neale gave evidence that it became clear what this item was about. The cost was incurred in relation to having the edges of the rugs stitched/bound in order to prevent their fraying, not a fitting cost at all.

43. The Tribunal, weighing all the evidence, determines that the Applicant agreed that there should be relevant costs expenditure on all the above items at the landlord's discretion; and the Tribunal thus finds that the expenditure was reasonably incurred for the purposes of section 19(1)(a) of the Landlord and Tenant Act 1985, leaving only the question of whether each cost was reasonable in amount.

44. In that regard, whilst the Leaseholders agreed that there should be a refurbishment, they did not agree the amount to be spent; it was essentially left to Mr Neale to get the "best price for the house" in practice. As such, it cannot be argued that section 27A(4)(a) is engaged, i.e. that the Tribunal has no jurisdiction over the cost because the Applicant has either agreed or admitted the amount of the cost. We must therefore determine the issue.`

45. Having said all that, we note that the Applicant does not expressly argue that the sums spent were excessive. We remind ourselves of *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC) in which the Upper Tribunal held at paragraph 28:

> "Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach."

46. In the light of those dicta, and the Applicant's position, we have no reason to be sceptical about the sums incurred by the Respondent. The sums do not appear unreasonable to this Tribunal. Indeed, it must be remembered that Mr Neale did all the work to source/fit/hang the items, but did not charge any labour costs.

47. Specifically as regards the clock, we are prepared to accept the Respondent's evidence that the cost of the clock was not charged to the Leaseholders, despite its appearance on the ledger contained in the hearing bundle as a debit.

48. As for the argument advanced by the Applicant under s.20B(1) of the Landlord and Tenant Act 1985, namely that all the above items concern costs which were incurred more than 18 months before a demand for payment was made, the Tribunal is assisted by *Gilje v Charlegrove Securities Ltd* [2003] EWHC 1284 (Ch), in which Etherton J (as he then was) explained at para 27 that the policy behind section 20B is that the tenants should not be faced with a bill for expenditure of which they were not sufficiently warned to set aside provision; it is not directed at preventing the lessor from recovering any expenditure on matters, and to the extent, of which there was adequate prior notice.

49. More specifically, *Gilje*, at para. 20 of the decision, is authority for the proposition that s.20B of the 1985 Act has no application where:

    (1) The tenant makes payments on account to the landlord in respect of service charges;
    (2) The actual expenditure of the landlord does not exceed the payments on account;
    (3) No request by the landlord for any further payment by the tenant needs to be or is in fact made.

50. It seems to us that the above applies in the instant case. The Applicant made her £140 pcm payments in advance. The Respondent's actual expenditure does not appear to have exceeded the payments on account made by the Applicant up to October 2021, which covered the expenditure in dispute. No proper demand for further payment was thereafter made by the Respondent (especially none which contained any summary of rights and obligations), nor was there any notice satisfying s.20B(2) of the Act; but that does not matter in relation to be above items: *Gilje* applied. Accordingly, we do not consider that the costs are time-barred as alleged by the Applicant.

51. In summary therefore, we find all the costs under this heading, with the exception of the clock, to have been reasonably incurred and reasonable in amount; and the amount payable by the Applicant is her due proportion, being 1/6 of the total of £2289.23, which we calculate to be £381.53.

2021: Homeflair (£190.67) – p.44

52. The Applicant's arguments in the Scott Schedule, expanded in oral representations, are:

    (1) No estimates were provided;
    (2) No service charge was demanded;
    (3) 18 month time bar applies (s.20B Landlord and Tenant Act 1985);
    (4) It is unclear what the expenditure was for.

53. The Respondent counters this with the following, in the Scott Schedule:

    (1) The Applicant had the necessary receipt by 25 March 2022;

(2) There had been no request for any service charge accounts;

(3) The communal area refurbishment was agreed on 23 June 2019.

54. No receipt was provided in the bundle before us. So, it was only when Mr Neale gave evidence that it became clear what this item concerned; and it was nothing to do with the hallway refurbishment. He gave evidence that the cost was incurred in relation to a leaf blower, bought from the DIY store Homeflair.

55. Given the Lease requirements in clause 3(i)(B) for the Respondent to maintain etc. the paths, we consider this was a cost which was reasonably incurred. The Applicant did not challenge the amount, and we repeat paragraphs 45 and 46 above.

56. We repeat our findings regarding s.20B, above. The amount payable by the Applicant is therefore 1/6 of £190.67 = £31.77.

2023: Herts Build (£126.50) – p.47

57. The Applicant's arguments in the Scott Schedule, expanded in oral representations, are:

(1) No invoice or estimate, and so she is unclear what it was for;
(2) No service charge was demanded.

58. The Respondent counters this with the following, in the Scott Schedule:

(1) There had been no request for any service charge accounts;
(2) Statement para 45.31 (reinstatement of a heavy sign which had been knocked over at the entrance of the house).

59. Mrs Murrihy made representations that this was expenditure on a heavy concrete post, which had been knocked over, and which possibly bore the name of the house on it. But even then, Mr Neale posited that it might have been a concrete post behind a fence which had been blown over, and which needed reinstating. He said there will be an invoice somewhere, but he did not believe it to be in the bundle.

60. This was clearly not the most satisfactory evidence. There was a lack of clarity. But we do accept that the works involved reinstatement of a post, which had become dislodged, wherever it was. Given that the Applicant did not contend this was outside the terms of the Lease, we consider this was a cost which was reasonably incurred. The Applicant did not challenge the amount, and we repeat paragraphs 45 and 46 above.

61. The amount that would be payable by the Applicant is therefore 1/6 of £126.50 = £21.08. However, no valid demand had been made by the time of

the hearing and both parties have not consented to, nor made representations to the Tribunal considering any later demand.

2023: RTA systems (£858) – p.47

62. The parties representations were exactly the same as those under paragraphs 57 and 58(1) above, with the addition that the item concerned repair of a communal aerial at the house, when 3 flats lost signal owing to a faulty launch amplifier.

63. The Respondent further explained this concerned an aerial which had been blown off the house in a storm, and which needed to be replaced. It was situated on the main chimney breast, and was an analogue system. Three leaseholders were affected by this incident, although the Applicant was not one of them. There is no invoice in the bundle.

64. Given the Lease requirements in clause 3(i)(A) and (C) and (ii), for the Respondent to maintain the roof (including all "roofing material") and any cable, we consider this was a cost which was reasonably incurred. The Applicant did not challenge the amount, and we repeat paragraphs 45 and 46 above.

65. The amount that would be payable by the Applicant is therefore 1/6 of £858 = £143. However, no valid demand had been made by the time of the hearing.

2023: Front door lock: £30.59 and £117.79.

66. The Applicant's representations were:

(1) No invoice;
(2) No estimate;
(3) No service charge was demanded;
(4) The Lease has no clause to allow for personal improvements to be undertaken to leaseholders' properties.

67. The Respondent counters the above, by alleging:

(1) There had been no request for any service charge accounts;
(2) Statement para 45.31: for main door, when a number of residents had moved on; Mr Neale will be fitting these locks.

68. The Respondent explained that new locks were required for the communal entrance door, with the cost split into the barrel cost and the remainder. However, the lock had not been fitted yet, because they were waiting for all new occupants (including the proposed purchaser of flat 2) to move in.

69. Given the Applicant has her own entrance, the lock had not been fitted yet, and there was no invoice in the bundle, we do not consider this to have been a cost reasonably incurred, and we disallow the 2 costs as against the Applicant.

2023: Cleaning: £140 (x3).

70. The Applicant's representations were:

    (1) No invoice;
    (2) No estimate;
    (3) No service charge was demanded;
    (4) The porch to her Property had never been cleaned.

71. The Respondent counters the above, by alleging:

    (1) There had been no request for any service charge accounts;
    (2) Statement, para 45.31: in the last few months it had been decided that there should be a cleaner.

72. The Respondent explained that the £140 challenged in the Scott Schedule was 1 month (out of 3 months) in 2023 when the leaseholders were charged for cleaning of the communal areas, a total of £420.

73. The Applicant was asked whether she wished to challenge all 3 payments, rather than 1, and she concurred. The Respondent was asked whether it would accept a challenge to all 3 months, and it also agreed. No additional evidence was required. The Tribunal therefore allowed, by consent, an amendment to the Scott Schedule to permit a challenge to March, April and May 2023 payments of £140pcm.

74. The cost was explained to be for a single cleaner, to clean all 3 levels of the communal area to the front entrance door, once per week. It included vacuuming, dusting, cleaning of the inside of the windows, the balustrade and mirror. It was a short term contract. Historically there had been a cleaner, but when money became tight, the service had been discontinued, the Respondent explained, and leaseholders were asked to clean outside their own doors. However, this system did not work out well, and the areas soon became neglected. Hence the short term contract for March, April and May 2023.

75. We consider this was cost reasonably incurred, given the Lease covenant on the Respondent at clause 3(i)(C) and (ii) to clean the halls, passages landings and stairs, employing such persons as may be reasonably necessary.

76. However, the cost appears excessive to the Tribunal, which estimated this task would require approximately 5 hours per month which would be over £35 p/h, for a jobbing cleaner with no company overheads. We consider a figure of £100 pcm to be acceptable, being nearer to £20 p/h, in our experience.

77. The amount that would be payable by the Applicant is therefore 1/6 of £300 = £50. However, no valid demand had been made by the time of the hearing.

2023: TJ Connors: £350.

78. The Applicant's representations were:

(1) No details of item, possibly a brickwork repair;
(2) No invoice;
(3) No estimate;
(4) No service charge was demanded;

79. The Respondent counters the above, by alleging:

(1) There had been no request for any service charge accounts;
(2) Statement, para 45.31: damp in hallway which needed rectification, with additional touching up and filling of cracks.

80. The Respondent by Ms Murrihy believed this to be the matter of a damp patch in the hall, and invited Mr Neale to speak, who further explained that this item related to damp on the first floor communal landing, at the top of the 1st floor landing next to the meter boxes, He added, "I know damp when I see it". He explained it was about 1 foot square, and was an isolated spot. He explained that TJ Connors are painters and decorators. They also filled in some cracks/holes in the wall. No invoice was available to us.

81. The Tribunal was not convinced that a painter and decorator would be qualified to address a damp patch on the wall, and given the high cost, and the lack of an invoice, plus lack of details of the hours spent on the work, the Tribunal does not find this to have been a cost reasonably incurred or reasonable in amount.

2023: MG Construction: £380.

82. The Applicant's representations were:

(1) No details of item;
(2) No invoice;
(3) No estimate;
(4) No service charge was demanded;

83. The Respondent counters the above, by alleging:

(1) There had been no request for any service charge accounts;
(2) Statement, para 45.31: repairs to external brickwork.

84. The Respondent explained that this cost was for missing bricks and repair of holes externally around the building, front, sides and back. The works, Mr Neale said, took all day on a Friday and a Saturday afternoon. No invoice was available in the bundle, the Respondent conceded. The cost included VAT, it was believed, and covered labour and materials. The cost of a tower scaffold was included, as the builder brought its own.

85. The Tribunal is satisfied the oral evidence was sufficient to support a cost which was reasonably incurred, payable under the Lease (given the repairing

covenant at clause 3(i)(A)), and reasonable in amount in our experience, for 1.5 days work and materials.

86. The amount that would be payable by the Applicant is therefore 1/6 of £380 = £63.33. However, no valid demand had been made by the time of the hearing.

The Applicant's set off

87. In her application, the Applicant sought to set off several costs, effectively by way of damages for alleged breach of covenant by the Respondent. In the end, she did not pursue the majority of these items. The only one which we are required to determine is the cost of a jetting of a drain in the sum of £132.

88. In *Continental Properties v White* LRX/60/2005, the Lands Tribunal decided that a tenant was entitled to a discount from the service charge bill on the basis that, if the tenant had sued in the County Court for breach of covenant, he would have recovered general damages which could have been set-off against the service charge. It was open to the Tribunal to assess such putative damages and to reduce the service charge accordingly, the Tribunal held. Indeed, Judge Rich went further and said:

> "….I accept that the Tribunal has jurisdiction to determine claims for damages for breach of covenant only in so far as they constitute a defence to a service charge in respect of which the Tribunal's jurisdiction under section 27A has been invoked. I see no reason of principle why such jurisdiction should not extent to determining even a claim for loss of amenity or loss of health arising from breach of a repairing covenant."

89. Despite this statement, it is generally accepted that it would only be appropriate for a Tribunal to set-off sums that are either specified and/are simple to assess. Furthermore a Tribunal should not assess damages that are likely to exceed an otherwise payable service charge sum.

90. In the instant case, the sum is small, it would not exceed the sums we have determined are due, and the underlying claim is simple: drains which are the Respondent's liability under clause 3(i)(B) and (C) of the Lease had become in want of repair, and had caused a backup of water into the Applicant's boiler.

91. The Respondent during the hearing agreed there should be a credit of £132 to the Applicant; but we would have determined in any event that the above sum could be set off, even if it had been disputed. This had been an issue for several months (from November 2021 to at least April 2022), and we are satisfied that the Respondent had sufficient notice of the defect, but had failed to take steps within a reasonable time to remedy the problem.

92. We consider that the Applicant is entitled to damages in the sum she spent to remedy the defect. This was £132, and is supported by an invoice.

Application under Section 20C/Paragraph 5A to CLARA

93. In *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), HHJ Rich held:

> "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

94. In the instant case, the Applicant said she had spent 3 years trying to get to the root of her issues; that she had sought professional advice and had even suggested a mediator.

95. The Respondent denied that the Applicant had been ignored: initially, all leaseholders had been copied into correspondence, but when the Applicant fell out with some leaseholders, communication was not as regular as before. The Applicant retained paperwork from her time as director and never returned it.

96. We are persuaded to make an order in favour of the Applicant. Whilst it is difficult for the Tribunal to unravel where the truth lies in relation to the issue of whether sufficient accounts and invoices were provided to the Applicant before the Application was brought, and whilst the Respondent has succeeded on most of the items challenged, it is clear from our findings above that it was the Respondent's late supplementary oral details given at the hearing on many of the items which tipped the scales in its favour. These details could and should have been given to the Applicant at an earlier stage. It would be unjust for the Respondent to be able to recover costs through the service charges against the Applicant in such circumstances.

97. The application by the Applicant under s.20C of the Landlord and Tenant Act 1985 is granted. No relevant costs in relation to this s.27A application may be recovered from the Applicant through the service charges.

Costs

98. We consider, in our discretion, that justice requires an order that the Respondent do reimburse the Applicant half of the hearing fee and application fee (£300/2 = £150), to reflect the findings we have made.

Judge:

S J Evans

Date:

22/4/24

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the Application for permission to appeal to proceed despite not being within the time limit.
4. The Application for permission to appeal must 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.

Appendix 1

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(3) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20B

"Limitation of service charges: time limit on making demands.

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant

was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, a First-tier Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) .....
(3) .....

(4) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

(1) An Application may be made to the appropriate 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 it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An Application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  (a) the person by whom it would be payable,
  (b) the person to whom it would be payable,
  (c) the amount which would be payable,
  (d) the date at or by which it would be payable, and
  (e) the manner in which it would be payable.

(4) No Application under subsection (1) or (3) may be made in respect of a matter which -
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.