FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LSC/2024/0246**
Property	**:**	**73b Chatsworth Road, London, E5 0LH**
Applicant	**:**	**Tibor Stern**
Representative	**:**	**Mr. Simon Stern - Son**
Respondent	**:**	**Sarah Shore**
Representative	**:**	**N/A**
Type of application	**:**	**An application under sections 27A Landlord and Tenant Act 1985 – payability and reasonableness of Service Charges**
Tribunal member(s)	**:**	**Judge Sarah McKeown** **Mr. J. A. Naylor MRICS FIRPM**
Date and Venue	**:**	**17 November 2024 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**25 November 2024**

DECISION

Decisions of the tribunal

(1) ***The Tribunal finds as follows, the following charges are payable and reasonable:***

(a) 2021 - £602.27:
(i) Insurance of £547.52;
(ii) Management fee of £54.75
(b) 2022 – £686.85

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(i) Insurance of £624.41
(ii) Management fee of £62.44

(c)2023 – £1,060.05

(i) Insurance of £904.88
(ii) General maintenance - £58.80
(iii) Management fee of £96.37

(d) "Ad hoc" charges as follows:

(i) **If dispensation pursuant to s.20ZA is not given – charges of £250 are payable and reasonable;**
(ii) **If dispensation pursuant to s.20ZA is given – charges of £2,010 are payable and reasonable.**

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, but limits the order to 50% of the costs incurred by the Applicant in connection with this application.

(3) The Tribunal makes an order in respect of the Applicant for a refund of the tribunal fees of £330 to paid by the Respondent on or before 20 December 2024.

References are to page numbers in the bundle provided for the hearing.

<u>The Application – p.1</u>

1. The Applicant freeholder seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and reasonable.

2. The Applicant is the freeholder of 73b Chatsworth Road, London, E5 0LH ("the Property") which is situated in a converted house which has three flats and commercial premises on the ground floor. The Respondent is the lessee of the Property. The Property is a two-bedroom flat.

3. The application states that the matters in dispute are:
(a) 01/01/2021-31/12/2021 – insurance premium of £547.46 (being the Respondent's one-third share of £1,642.55) and management fee of £54.75;

(b) 01/01/22-31/12/22 - insurance premium of £624.35 (being the Respondent's one-third share of £1,873.25 and management fee of £62.45;

(c) 01/01/2023-31/12/2023 - insurance premium of £904.80 (being the Respondent's one-third share of £2,714.64), management fee of £90.48 and general maintenance of £62.80 (being the Respondent's one-third share of £188.40).

(d) "*Ad Hoc*" charges – £2,020 (£6,030 – the Respondent's one-third share of £6,030).

4. The total value of the dispute is said to be £4,357.10.

5. No application is made (in the application notice) pursuant to s.20C of the 1985 Act nor to para. 5A, Sch. 11 2002 Act.

6. On 3 July 2024 the Tribunal gave directions (p.51). It was noted that the Applicant was seeking a determination under s.27A Landlord and Tenant Act 1985 as to whether service charges were payable, namely for the Respondent's share of the insurance premiums and management fees for the years 2021-2023 and "ad hoc" costs of £,6,030.

7. Directions were then given for the progression of the case including:

   (i) Disclosure of all relevant service charge accounts and estimate for the years in dispute, with all demands for payment of service charges and details of any payments made;
   (ii) A Schedule from the Applicant setting out the service charge items in dispute, why they were disputed and the amount, if any, she would pay for them, along with copies of documents relied upon, including a statement setting out the relevant service charge provisions in the Lease and any legal submissions;
   (iii) Response by the Respondent to the schedule, with copies of all relevant invoices, along with copies of documents relied upon, including a statement setting out the relevant service charge provisions in the Lease and any legal submissions;
   (iv) A reply from the Applicant;
   (v) An agreed hearing bundle.

<u>Documentation</u>

4. The Tribunal has been provided with a bundle of documents, comprising a total of 553 pages. This includes a Scott Schedule (p.57), witness statement of Mr. Simon Stern (p.59), Respondent's statement of case (p.234) and decision in LON/00AM/LSC/2023/0482 (p.394). The Respondent has provided a Skeleton Argument.

The Hearing

5. The Respondent attended the hearing, in person. Mr. Simon Stern attended (accompanied by Ms. Nelmes of Fountayne Managing Ltd, who played no active part in the hearing). Mr. Simon Stern is a director of Seaboard Consulting Ltd. An issue arose at the start of the hearing as to his capacity and authorisation to represent the Applicant. Mr. Stern confirmed that he had been involved in the Property in a personal capacity as the son of the freeholders. He confirmed that neither he nor Seaboard Consulting Ltd were managing agents for this property. It was also confirmed that Fountayne Managing Ltd were not the managing agents for this Property. The Tribunal was sent an email from the Applicant, confirming Mr. Simon Stern's authorisation to represent him at the Tribunal.

6. The Tribunal confirmed with the parties that this was the Applicant's application and that was what the Tribunal was hearing – whilst some of the issues that the Respondent raised in her Skeleton Argument may arise in the course of this application, the only issues the Tribunal were considering were the payability and reasonableness of the service charges.

7. The Tribunal heard initially from Mr. Simon Stern. He took the Tribunal through the Lease, confirming the clauses of the Lease relied upon.

8. Mr. S. Stern's witness statement is at p.59 of the bundle. He confirmed that the Property was owned by his parents. He said that he had worked with his parents in the past (until about 9-10 years ago) but that they still came to him when they needed help. He said that he had known the Property and dealt with the Respondent, but not in a professional capacity. The Service Charges had been charged by Effective Management. When asked by the Tribunal as to the capacity in which he had made the witness statement, he said that it was as the Applicant's son and as a professional person, but when pushed further on this, he confirmed that he was not acting in any management capacity for the Property.

9. He said that the Property was situated in a Victorian house, which had a commercial unit on the ground floor, which was now a bakery. He said that the expenditure was split between all leaseholders. He said that the commercial unit used to be an estate agent, and it had the ground floor and basement (which included one residential room). The two residential flats (including the Property) were above. In 2014, the estate agent vacated, and the Applicant rented out the ground floor and part of the basement as a take away/restaurant. The freeholder converted rest of basement into two self-contained studio flats and retained the residential room, which was a bedsit. Nothing changed the percentages

paid by the flats above the ground floor – which remained one third each. Mr. S. Stern said that if the Respondent wished to change that, she would need to make an application to vary the terms of the Lease.

10. In relation to the insurance, he said that the renovations undertaken were done in the belief that the whole building would be covered by the insurance and the Applicant had got information from the insurance broker to say that there was no such issue (p.195).

11. Mr. Naylor asked Mr. S. Stern if someone had spoken to the insurance company about the planning issue with the basement and whether it had been confirmed that it would have no effect on the insurance premium and validity. Mr. S. Stern confirmed both of these things and referred to p.195.

12. Mr. S. Stern said that there was a legal obligation on the Applicant to insure the Property. He referred to the documents which confirmed the insurance policies:

(a) 2020 – p.478 – invoice at p.473;
(b) 2021 – p.484
(c) 2022 - p.186;
(d) 2023 – p.378.

13. In respect of the management fee, the Tribunal asked Mr. S. Stern what other services were provided. Mr. S. Stern said that the services were minimal (fire compliance, EICR) but that the fee of 10% was only calculated on actual charges.

14. In respect of the "Ad hoc" charges, Mr. S. Stern said that in July 2022 the commercial tenant gave notice that some bricks had fallen from the building and this created an emergency. It was not noticeable before and it was an emergency. Mr. S. Stern's parents instructed him to get someone to have a look, which he did. The area was secured, emergency works carried out and something was put something around property in case anything else fell. A surveyor produced a report (p.209) who said that there needed to be scaffolding up for him to properly assess the situation. He did a schedule of works. The remedial works (non-urgent) had not yet been carried out.

15. The service charge demand was at p.226 and the individual invoices were:

(a) £840 – p.232;
(b) £3,505 – p.231;
(c) £735 – p.230;
(d) £960 – p.439.

16. The £950 management fee was claimed under the same clause of the Lease as the 10% management fee.

17. Mr. S. Stern said that the leaseholders had been written to, to obtain consent for dispensation from the s.20 consultation requirements.

18. The Respondent then asked Mr. S. Stern some questions as follows:

19. She said that she had written to the freeholder twice about her concerns that the insurance policy would be invalid due to there not being planning permission for the renovations and stating that she would pay under protest. She had no response and she asked why? Mr. S. Stern said that was due to her history of not paying her service charges – that since he had known her (2007), she had never paid. He described her queries as a "gimmick" and said that she was playing a game.

20. The Respondent asked Mr. S. Stern why he had not sought clarification from the insurance company as to what they were told etc. Mr. S. Stern replied that the freeholder had been told there was no issue with the insurance, the insurer was aware of the issues, the freeholder had a planning consultant who said that nothing needed to be done.

21. The Respondent referred to her letters (p.253, p.258) and said that she had had nothing back. She said that the email at p.195 had only just been produced, it was lacking in detail, there was no evidence from the insurance company that it had all the correct facts. She said she would want to see evidence from the insurance company that it had received all the correct information. She asked Mr. S. Stern why he had not produced any evidence from the insurance company that it aware of all the correct facts and why it did not have information from the brokers as to what had been declared on the forms about fair presentation of risk. Mr. S. Stern said that there was no provision in the Lease that allowed the Respondent to withhold money, that if she had an issue, she would have taken it up later. He said that the freeholder did not engage directly with the insurance company, that was why he used a broker.

22. The Tribunal asked Mr. Stern if the information about the renovations was given to the broker. He said that it was, and the email (p.195) confirmed that they were aware of everything. He said that there was no provision in Lease allowing the Respondent to withhold the service charges. He acknowledged that she had written to the Applicant, but he said that she had failed to pay the service charges every year and had breached the covenant(s) in the Lease. He said that, in relation to this year, the Applicant had (decided not to play along). He said that nothing in the Lease required the Applicant to provide additional information.

23. It was put to him that leaseholders were allowed to ask questions, and he said that they were, but after paying the service charges.

24. The Respondent was asked how she said that building was incorrectly described. She referred to p.370 and p.377 (the “Property Type” is “Café with Residential above”), p.378 (“Café (with deep fat fryer) with 2 Flats above”). She said that, from 2018 to date, there had been an enforcement notice requiring the basement flat not to be used. She said that the property had been incorrectly described as the bedsit on the ground floor and the two flats in the basement were omitted. Mr. Stern admitted that the building could have been described better, but that the Property (and the building) was insured, he referred to the email at p.195 and he said that the Respondent had nothing to contradict it. He did not accept that the building was wrongly described. The Respondent said that the flat subject to the enforcement notice was omitted. Mr. Stern said that the broker was aware that there was a bedsit on the ground floor and that there were two flats in the basement. He said that the building was insured.

25. The Respondent said that the Applicant was blaming the issue on the broker. She said she had written twice to voice her concerns and, at face value, the insurance was invalidated.

26. The Tribunal asked her about p.195 and she said did not accept that there was no issue in the light of it. She said that the email lacked detail, there was no evidence from the insurance company to confirm that they were aware of the correct facts, and there was no evidence from the broker as to what it had been told.

27. The Respondent referred to p.276, clause 2. Mr. S. Stern did not accept that the Applicant had not worked within the local authority laws. He said that the insurance broker was aware of the enforcement notice proceedings.

28. The Tribunal then heard from the Respondent. She said that until this year, there had been an enforcement notice to demolish the flats, and the insurance documents used an incorrect description.

29. The Tribunal asked whether the enforcement notice was still in place. The Respondent said that it had been upheld. Mr. S. Stern said that there was an appeal pending.

30. The Respondent said that the statement from the broker was a blanket statement which was lacking in detail, there was no evidence from the insurance company to show that it was aware of the material facts, there was no evidence of what was declared, particularly as to “presentation of risk”, and there was no way to tell if something had been minimised or not mentioned.

31. When asked about the management fee, she said that she had not raised about issue about that.

32. When asked about the "*Ah hoc*" works, the Respondent relied on the lack of s.20 consultation. She said that half of the surveyor's costs (TZG Partnership) related to a report for works which had yet been done. She was asked why she objected to the fee given there was no dispute that the surveyor had attended. She said that it did not relate to emergency works, and the invoice related to emergency works.

33. The Tribunal pointed out that the invoice was for "Ah hoc" works, but the Respondent said that they related to emergency works. It was pointed out that the report related to work required to the building, which the Respondent acknowledged, but she said that as far as she was concerned, the invoice was for emergency works.

34. The Respondent said that, in relation to non-emergency works, there should have been s.20 consultation.

35. The Respondent said that the other issue was the cost of the scaffolding. She said that the works took about a day and the scaffolding did not have to be up for so long.

36. Mr. S. Stern referred to p.213 and said that the scaffolding went up at the end of July and had to be up until the end of September, which was when TZG was able to attend and do the emergency works. The surveyor also needed the scaffolding up to do the report. The Applicant then had to obtained quotes from contractors and the contractors had to assess the site. He said that the surveyor attended in September and then did a follow-up inspection.

37. The Respondent said that the surveyor only attended twice (having regard to his invoice). Mr. S. Stern said that the surveyor came back in mid-September to look at the building again and he was on site with Mr. S. Stern in October. He said that maybe the surveyor did not charge for all visits. He said that he met with contractors on a number of occasions.

38. The Tribunal referred to the invoice for scaffolding from Expedite Services (p.231) which was dated 4 August 2022, which was for the supply of scaffolding around the building for one month with safety netting (which stated that each extra month would cos (£340) and this was for £2,250. The invoice at p.230 was dated 1 November 2022, and it was for £735. Mr. Stern said that the first invoice included the initial set up, putting up the scaffolding, and the netting. He was asked by the Tribunal why the first month was so much more than the second one. He said that the first invoice was the rental fee and the erection of the scaffolding. In addition, there was the netting and there had to be amendments to the floor levels, they had to get to two levels of landings, there was a wrap around the front and the side elevation and two levels of landing. Initially it was only the top, but they had to add another on the side elevation where the surveyor wanted to carry out some further inspection.

39. The Respondent said that the invoices from Expedite Service had no name or company number and she wondered if it was related to the Applicant's companies, and/or was his trades people. She said she had looked on Companies House and there was no trace of this company.

40. She said she also queried the managing fee of £950 at p.167. Mr. S. Stern said that this was £800 plus VAT. He said that the hourly rate was £75 per hour.

41. The Respondent said that she asked for invoices and a breakdown of costs and rates (including p.400) but there was no response from the Applicant. She said that the invoices in the bundle were only provided recently.

42. The Respondent said that her key point was that no application for dispensation had been made (until recently) and the Applicant had not provided invoices (in respect of the "Ad hoc" works) and the email about the insurance (p.195) until the application had been brought.

43. The Tribunal then heard submissions from Mr. S. Stern. He said that the Applicant had demonstrated that the charges were due under the lease. The Respondent had not paid, and this was in breach of the Lease. He said that the Applicant had had to bring the application as a precursor to a s.146 notice and forfeiture proceedings. He said that the Applicant was under no obligation to supply invoices. The Tribunal queried this and Mr. S. Stern said that the obligation on the freeholder was to make invoices for the leaseholder to inspect, not to provide them. When asked why the Applicant had not responded to the letters from the Respondent, he said that they were a "gimmick".

44. The Tribunal asked Mr. S. Stern whether the Applicant had offered to make the invoices available. He said that he did, but there was nothing in the bundle to show this.

45. Mr. S. Stern said that he had no financial interest in Expedite Services. He said that the Respondent had not provided any alternative quote for insurance.

<u>The Lease – p.16</u>

46. The Lease is dated 30 September 1988 and is between Buyis Properties Limited and Mr. Dunford and Mr. Morey.

47. It is not in dispute that the Respondent has held the leasehold interest in the Property since 12 January 2021.

48. The Lease provides that the tenant's share of the service charge is one third.

49. The Lease defines the Flat as the Second and part First Floor Flat known as 73B Chatsworth Road, Clapton, E5. The "Building" is defined as 74 Chatsworth Road.

50. It defines "the Accounting Period" as the period commencing on the first day of January and ending on the thirty-first day of December in any year

51. The tenant agrees (cl. 2(2)) to pay all rates taxes duties assessments charges impositions and outgoings which may now or at any time be assessed charged or imposed upon the Demised Premises or any part thereof or the owner or occupier in respect thereof. The Lessee also agreed (cl. 4(4)) to pay the interim service charge and the service charge at the times and in the manner provided in the Fifth Schedule.

52. By cl. 5(5)(c) the Lessor agreed to insure and keep insured the Building against loss or damage by fire explosion storm tempest earthquake subsidence landslip and heave and such other risks (if any) as the Lessors as are usually covered by a comprehensive policy or insurance in some Insurance Office of repute in the full reinstatement value therefore including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof and to insure the fixtures and fitting plant and machinery of the Lessor against such risks as are usually covered by a Flat Owner's Comprehensive Policy and to insure against third party claims made against the Lessor in respect of management of the building and in the event of the Building or any part therefore being damaged or destroyed by fire or other insured risks as soon as reasonably practicable to lay out the Insurance moneys in the repair rebuilding or reinstatement of the premises so damaged or destroyed subject to the Lessor at all times being able to obtain all necessary licences consents and permissions from all relevant authorities in this respect.

53. Clause 5(5)(g) provides for the landlord to:

    (a) employ at the Lessor's discretion a firm of Managing Agents to manage the Building and discharge all proper and reasonable fees salaries charges and expenses payable to such Agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any part thereof;
    (b) employ all such surveyors buildings architects engineers tradesman accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building.

54. The Fifth Schedule defines:

"Total Expenditure" as the total expenditure incurred by the Lessor in any Accounting Period in carrying out their obligations under Clause 5(5) of the Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing"

(a) The cost of employing Managing Agents
(b) The cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder

"The Service Charge" means the proportion of the total expenditure mentioned in the particulars A proportion of the amount contributable to the Demised Premises shall be paid from the date of this Lease to the thirty first day of December next following

"The Interim Charge" means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or its Managing Agents shall specify at their discretion to be a fair and reasonable interim payment and for the time being the amount specified in the Particulars

55. It is provided that if the interim charge paid by the Tenant in respect of any Accounting Period exceeds the Service Charge for that period the surplus of the Interim Charge so paid over and above the Service Charge shall be carried forward by the Lessor and credited to the account of the Tenant in computing the Service Charge in succeeding Accounting Periods as hereinafter provided.

56. Further, if the Service Charge in respect of any Accounting Period exceeds the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus from previous years carried forward as aforesaid, then the tenant shall pay the excess to the Lessor within twenty eight days of service upon the tenant of the Certificate referred to and in case of default, the same shall be recoverable from the Tenant as rent in arrear.

57. It is provided that, as soon as practicable after the expiration of the Accounting Period there shall be served upon the tenant a Certificate signed by the Lessor's Agents containing:

(a) The amount of the total expenditure for the accounting period;
(b) The amount if interim charge paid by the tenant in respect of that accounting period together with any surplus carried forward from the previous accounting period;

(c) The amount of the service charge in respect of the accounting period and of any excess or deficiency of the service charge over the interim period.

The Law

58. Section 18 of the Landlord and Tenant Act 1985 provides:

> "(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 –
>
> i. Which is payable, directly or indirectly, for service, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
> ii. The whole or part of which varies or may vary according to the relevant costs.
>
> (2) The relevant costs are the costs or estimate 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.

59. Section 19 of the 1985 Act provides:

> "(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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
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> and the amount payable shall be limited accordingly.

(2) 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"

60. Section 27A provides:

> "(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 –
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> (a) the person by whom it is payable,
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> (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 –
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> (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

61. In *Waaler v Hounslow LBC* [2017] EWCA Civ 45 the Court of Appeal said that "reasonableness" has to be determined by reference to an objective standard, not the lower standard of rationality.

62. In *OM Property Management Ltd v Burr* [2013] EWCA Civ 479, the Master of the Rolls said:

"On the other hand, as section 19(2) makes clear, there is a different regime in relation to estimated costs before they are incurred. The landlord or management company is entitled to reflect reasonable estimated costs in the service charge and the status makes no provision for adjustment of estimated costs".

63. In *Carey Morgan v De Walden* [2013] UKUT 134 (LC) the Upper Tribunal set out a two-stage approach to determining an application challenging the reasonableness of interim service charges:

- The contractual entitlement must be established; and
- The Tribunal must consider whether the s.19(2) filter prevents the landlord from including any part of the amount demanded on the basis that it is greater than reasonable.

64. "Service Charges and Management" (5th ed.) states at 12-29 that the "amount must be objectively reasonable, and the onus is on the landlord to satisfy the relevant tribunal that that is so.

<u>Service Charges</u>

<u>2021 – p.176</u>

Insurance - £547.52

65. The insurance premium for 1 January 2021-31 December 2021 was £1,642.55, of which the Respondent was liable for one third, being £547.52 (clarified at the hearing as the correct figure). The Applicant has an obligation to insure the Building (cl. 5(5) as set out above) and therefore these are charges that the Respondent is liable to pay under the terms of the Lease. Under the terms of the Lease, the Respondent is liable for one third of this charge.

66. Turning to the reasonableness of the charges, the Respondent has not provided any comparable charges. The reason she appears to dispute the reasonableness of the charge is on the basis that she says (in summary) there was no evidence from the insurance company to confirm that they were aware of the correct facts (as to the issue with planning permission and the enforcement notice), that the property as a whole had been incorrectly described, and that therefore the insurance policy was not validly in place.

67. The Tribunal has seen the email from Mr. Horner at p.195. This states that the underwriters are aware of the planning permission issue and enforcement notice. It also makes clear that it is known that the basement is occupied as residential accommodation and the ground floor is occupied by a commercial café.

68. In light of this confirmation, the Tribunal finds, to the extent that it needs to (i.e. to determine the reasonableness of the charge) that the insurance policy was validly in place. The Tribunal therefore finds that the charge for insurance was reasonable.

Management fee - £54.75

69. By cl. 5(5)(g) the Applicant can employ a firm of Managing Agents to manage the Building, or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any part thereof. Under the terms of the Lease, the service charge is a proportion of the total expenditure. The total expenditure is the cost incurred by the Lessor in any Accounting Period in carrying out their obligations under Clause 5(5) of the Lease and any other costs and expenses reasonably and properly incurred in connection with the Building.

70. A management fee is therefore chargeable under the Lease. The fee is only applied to the insurance charge and clearly work has been done to put the insurance policy in place. The Tribunal used its expert knowledge (that management fees are often charged on the basis of work at between 7-12%) and finds that 10% is a reasonable amount.

2022 – p.176

Insurance - £624.41

71. The insurance premium for 1 January 2022-31 December 2022 was £1,873.25, of which the Respondent was liable for one third, being £624.41 (clarified at the hearing as the correct figure).

72. For the same reasons as set out in relation to 2021, the Tribunal finds that this sum is due under the Lease and is reasonable.

Management fee - £62.44

73. For the same reasons as set out in relation to 2021, the Tribunal finds that this sum is due under the Lease and is reasonable.

2023 – p.178

Insurance - £904.88

74. The insurance premium for 1 January 2022-31 December 2022 was £2,714.64, of which the Respondent was liable for one third, being £904.88.

75. For the same reasons as set out in relation to 2021, the Tribunal finds that this sum is due under the Lease and is reasonable.

General maintenance - £62.80

76. The demand (p.178) states that the sum of £188.40 was spent on a front door lock, of which the Respondent's share was £62.80. The only invoice in the bundle is for £176.40 (p.194, of which, the Respondent's share would be £58.80. The Tribunal finds this due and chargeable under the Lease, and reasonable in amount.

Management fee - £96.76

77. This sum is charged on the insurance and the general maintenance charges (10% of both) but for the same reasons as set out in relation to 2021, the Tribunal finds that the amended, sum (to take account of the adjusted general maintenance fee) of £96.37 is due under the Lease and is reasonable.

"Ad hoc" – p.166 - £2,010

78. These are for the works set out in the invoice dated 24 August 2023, which concern works carried out in 2022, plus a proposed structural schedule of works drawn up by a surveyor (20 September 2022).

79. The Applicant admits that s.20 Landlord and Tenant Act 1985 was not complied with. He has made a separate application to the Tribunal for dispensation pursuant to s.20ZA (p.115) – that application is not before this Tribunal. Directions have been given (p.171) and the application is due for determination at around the time of this decision.

80. There was clearly an issue with the exterior of the Building, which falls within the Respondent's repairing obligations. It was an urgent issue, given the health and safety issues. The costs for a surveyor to attend and advise on how to secure the affected area and on the remedial costs are lawful charges and are reasonable. Even if the works in the report produced by TZG (p.209) have not yet been done, in view of the issues with the external brickwork, it fell within the Applicant's obligations under the Lease, and it was reasonable, to have a surveyor attend and produce a report, setting out remedial works. The need for a survey was urgent, even if the works set out in the report were not urgent works.

81. It was also within the Applicant's obligations and reasonable to have someone attend to remove the loose bricks from the front of the building, supplying and fitting harris fencing, and supply scaffolding around the Building. In terms of the cost, this is a large amount compared to the "Additional scaffolding rental" which was for 2 months. Mr. S. Stern, however, explained why this initial cost was in this amount – the first invoice included the initial set up, putting up the scaffolding, and the netting. He was asked by the Tribunal why the first month was so much more than the second one. He said that the first invoice was the rental fee and the erection of the scaffolding. In addition, there was the netting and there had to be amendments to the floor levels, they had to get to two levels of landings, there was a wrap around the front and the side elevation and two levels of landing. Initially it was only the top, but they had to add another on the side elevation where the surveyor wanted to carry out some further inspection.

82. He also explained that the scaffolding needed to be up from the end of July. The surveyor attended in September and then did a follow-up inspection, meaning the scaffolding was up for about three months.

83. The additional scaffolding rental for the following 2 months is reasonable in amount (and, for the avoidance of doubt, does fall within the Applicant's obligations under the Lease).

84. In respect of the management fee, there would have had to be management of these issues – from the first notification, engaging a surveyor and contractors etc. The Tribunal notes the contents of para. 19 of Mr. S. Stern's witness statement and p.207. The Tribunal finds that the hourly rate of £75 per hour is reasonable, and notes that some of the management (at least initially) would have been "out of hours". A charge for about 10 ½ hours, overall, is reasonable in the circumstances, given the nature of the problem, the works, the fact that there were some agencies with whom there had to be liaison (the surveyor, the suppliers of scaffolding, the surveyors) and the duration of the process.

85. Mr. S. Stern said that he had no financial interest in Expedite Services and the Tribunal has no information to find otherwise.

86. The Tribunal, subject to the issue of s.20 consultation/s.20ZA dispensation, finds that these costs are lawfully due and are reasonable in amount. It is the case, however, that there was no s.20 consultation and, as at the date of the hearing, no s.20ZA dispensation has been given. The position is therefore as follows:

87. If dispensation pursuant to s.20ZA is not given, the Respondent's charges in this regard are limited to £250. If such dispensation is given, the charges of £2,010 are lawful and valid charges.

<u>Section 20C and Costs</u>

88. The Respondent made an application pursuant to s.20C relied on paragraph 6 on p.4 and paragraph 2 on p.7 of her Skeleton Argument.

89. Mr. S. Stern said, on behalf of the Applicant, said that the Applicant had needed to bring this application as he intended to bring proceedings for forfeiture. He said that the Applicant had no obligation to supply copies of invoices, and the obligation was only to make them available. He said that the Respondent had failed to abide by the terms of her Lease and the Applicant should be able to recover its costs by way of service charge.

90. Section 20C of the Landlord and Tenant Act 1985 provides as follows:

> "(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.... the First-tier 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 tenant or any other person or persons specified in the application".

91. When faced with such an application, the Tribunal may make such order as it considers just and equitable in the circumstances.

92. The Tribunal has regard to the matters set out herein and has had regard to the success of the Applicant. The Tribunal notes the unhelpful attitude of the Applicant towards requests for documents from the Applicant – the Respondent had written to the Applicant on 28 April 2022 (p.255) and 27 February 2023 (p.260) and 14 September 2023 (p.400) but the Applicant did not engage. Taking everything into account, it is just and equitable to make the order sought by the Respondent, but to limit it to 50% of the costs incurred by the Applicant in connection with this application.

93. The Applicant also asked for a refund of Tribunal fees paid, being £330 (£110 issue fee and £220 hearing fee).

94. The Respondent resisted the application. She said that had attempted to contact the Applicant on two occasions but had had no response. She said that the application should not have been brought and that this was a simply issue which could have been dealt with by email. She said that the application was wasting everybody's time and if the Applicant had engaged, neither party would be at the Tribunal. She referred to the decision in LON/00AM/LSC/2023/0482 and said that she had a costs order made in her favour in that application which had not been paid.

95. Taking everything into account, the Tribunal does make an order for refund of the fees that the Applicant has paid in respect of his application – being £330.

Judge Sarah McKeown
25 November 2024

Rights of appeal

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

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

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such

reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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

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