In the FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal Case reference	**:**	**LON/00BD/LSC/2025/0853**
Property	**:**	**36 Cherwell Court, Broom Park, TW11 9RT**
Applicant	**:**	**Kings River (Gardens) Limited**
Representative	**:**	**Mr Giani (Counsel)**
Respondent	**:**	**Grzegorz Jerzy Pytel**
Representative	**:**	**Ms Simpson (Solicitor)**
Tribunal	**:**	**Deputy District Judge Samuel sitting as a Tribunal Judge** **Mr Duncan Jagger MRICS**
Date of decision	**:**	**December 2025**

DECISION

Background

1. The hearing of this matter was held on 24 November 2025. Due to there being a legal issue the Tribunal wanted submissions on from the parties, directions were issued to file and serve skeleton arguments by 1 December 2025. The parties complied and the following is the Tribunal's decision based on the questions arising.

Decision

2. Were the demands for the gardening service charges for the years June 2019 to June 2023 payable by the Respondent?
   No

3. Were the Applicant's costs payable under the lease?
   Yes but not under the clause claimed in the County Court proceedings

4. Were late payment charges claimed in the County Court proceedings payable under the lease?
   No

5. Was interest on the service charges claimed in the County Court proceedings payable under the lease?
   No

6. The case is to be transferred back to the County Court to determine issue of costs.

Procedural background

7. The Applicant issued proceedings in the County Court on 2 October 2024, that claim, as later amended, is as follows:

   a. Service Charges £971.60
   b. Administration fees £360.00
   c. Legal costs (as Administration fees) £4256.89
   d. Further costs and interest

8. An amended Defence and Counterclaim was filed on 19 March 2025.

9. The issues between the parties are set out in detail in the amended claim and defence and they concern the lease terms and validity of demands as opposed to the reasonableness of the Service Charges.

10. On 12 May 2025 District Judge Hartley made an order transferring the entire matter to the tribunal stipulating that a Tribunal Judge could sit as a Judge of the County Court when hearing the matter.

11. On 23 June 2025, Judge Martynski ordered: *Despite the terms of the order, the tribunal will only deal with the issue of the payability of the Service and Administration Charges and will return the matter to the Court once it has issued its decision for the Court to consider other issues of costs and interest.*

The hearing

12. At the hearing on 24 November 2025 the Applicant was represented by Counsel. The Respondent did not attend and no-one attended to represent him. The Tribunal waited to give time for the Respondent to appear and also called the Respondent's firm of solicitors to find out if they were intending to attend.

13. The Tribunal began hearing from the Applicant at 10.30 and Counsel went through the various issues.

14. During the hearing, the Tribunal were informed that the hearing had not been put in any diary by the Respondent's solicitors but they wished to attend but that all the solicitors were in a meeting.

15. The Tribunal determined that they would continue and that a video link would be left open should they choose to attend.

16. The above adaptations to the normal procedure were discussed with Counsel for the Applicant who understandably argued that the hearing should continue without any delays for the Respondent to appear.

17. The Tribunal had regard to its case management powers under the Rules and in particular the power to decide the form of any hearing. The steps the Tribunal took to allow the Respondent to participate to the Tribunal's mind furthered the overriding objective without unduly prejudicing the Applicant.

18. The Tribunal re-started during which Ms Simpson, who was not the solicitor with conduct, appeared. The Tribunal summarised the Applicant's case up to that point and gave her 10 minutes to prepare submissions in response.

19. Ms Simpson accepted that the single issue was whether or not a 'certificate' had been 'sent' to the Respondent in accordance with the lease. She accepted that were they not to succeed on that point the costs and interest would then not be in issue.

20. The parties made oral submissions in relation to the issue but it seemed to the Tribunal that the parties should be permitted to make further written submissions supported by any authorities. The Tribunal would then decide the matter based on those written submissions.

The lease

21. The original lease was dated 31 December 1974. A further lease was entered into on 10 March 2017.

22. In the lease of 10 March 2017 the lessor is Cherwell Court Freehold Limited and the lessee the Respondent in these proceedings. There are then two further parties to the lease Kings River (Flats) Limited and Kings River (Gardens) Limited. The 2017 lease does not affect the respective obligations of the parties to the original lease in a material way for the issues in this case. All further references in this decision to 'the lease' are to the lease of 31 December 1974.

23. By separate leases the Lessor demised the Garden Lands to the Garden Association (the Applicants) and the Flat site to the Flats Association.

24. By Clause 4 of the Lease the Lessee covenants with the Lessor, the Flat Association and the Garden Association. Clause 4(c) states:

As a separate covenant also with the Garden Association and each of the other lessees ….to observe and perform such of the said covenants and regulations as are set out in the Second parts of the said Second and Third Schedules and the said Sixth Schedule…

25. Part II of the Fifth Schedule states so far as is relevant:

2. The cost to the Garden Association of fulfilling its obligations shall be deemed to include:-

…

(b) all fees charges and expenses payable to any managing agents Solicitor Accountant Surveyor or Architect employed or instructed in connection with any question arising on the maintenance or management of the Garden Lands or the ascertainment or collection of the maintenance charge

…

(e) all administrative accountancy legal and other costs of the Garden Association in carrying on its business

3 The lessee shall pay to the Garden Association on the signing hereof and thereafter on the First day of January in every year commencing with the first day of January next the sum of Five pounds on account for the maintenance charge

4 As soon as practicable after the expiration of the year ending on Twenty-fourth day of June following the demise of the last flat or house on the Site and thereafter on each subsequent Twenty-fourth day of June the Garden Association ***shall ascertain and certify the amount of the actual maintenance charge for the preceding twelve months and the amount standing credit of the reserve fund and serve on the Lessee a copy of such certificate*** *(which shall be binding and conclusive on the Garden Association and the Lessee) and any balance remaining to be paid by the Lessee after being given credit for the interim payments made by the Lessee* ***in respect of such year shall be paid by the Lessee within fourteen days of the service of such certificate*** *or (if there is a balance repayable to the Lessee) such balance shall be credited to the account of the Lessee*

5 The Lessee shall on request be supplied with details and figures showing how the maintenance charge and the amount of the reserve fund have been computed

The issues

26. The following issues are dealt with below in the order they appear here:
    a. Are the service charges demands payable if there is no evidence of a certificate having been sent to the Respondent?
    b. Are costs payable in relation to the legal proceedings to recover the service charge?

c. Are late payment fees payable under the lease?
d. Is interest payable under the lease?

The Tribunal decision and reasons

Service charge demands

27. The defence in the County Court denied that the service charge demands were valid when served as they were not certified.

> *7. Clause 5 is admitted in that the Defendant received copies of the Service Charge Demands however it is denied that these demands were valid when served upon the Defendant as the Claimant failed to certify the demands.*

28. In reply to the defence the Applicant argued as follows

> *5. Paragraphs 5 to 7 are addressed as follows: service charge demands were issued in accordance with the Lease. The Defendant's allegation that the demands are invalid is unsupported. Certification under paragraph 4 of Part II of the Fifth Schedule is being verified and will be addressed with evidence as required. A reconciliation of amounts demanded and the figure of £971.60 has been prepared and will be provided.*
>
> *6. The Claimant notes that the Defendant appears to assert that the term "certify" as used in the Lease requires the accounts to be audited. The Claimant disputes this interpretation. The Lease does not stipulate that the accounts must be audited, only certified. Certification does not necessitate an audit. The ICAEW Technical Release on Residential Service Charge Accounts (2024), which we understand the Defendant may rely upon, confirms that certification may consist of an acceptance or signature and does not automatically require audit or assurance.*
>
> *7. The Claimant's service charge figures are prepared by an independent firm of accountants, appointed and approved at the AGM, and the resulting expenditure figures are consulted on and approved by the directors. Certification is effected by the managing agent or a director on behalf of the board. This satisfies the Lease requirement for certification.*

29. The argument Ms Simpson put forward was a little more nuanced which was that the demands may have been certified but that certification was not 'sent' to the Respondent as required under Clause 4 of Part II of the Fifth Schedule.

30. There was a 160 page bundle before the Tribunal and while there were service charge demands there was no evidence of any certification being sent to the Respondent.

31. It was because of this change of the defence, which while Mr Giani dealt with orally, the Tribunal determined that there ought to be a further opportunity to the parties to deal with the point to which end written submissions were made. Rather than wholly summarising the submissions, sections of those submissions are set out in full below.

32. The Applicant's position in summary is:

    a. The Respondent has been informed that "*he has the ability to obtain not only the document underlying the computation of charges, but also to have then audited independently"* and he has not done so. There has been no request for information or to inspect documents.
    b. The Respondent is a shareholder in the Applicant's company and in accordance with its duties under the Company Act 2006 the Applicant would have sent him annual accounts and reports and therefore he has received certified accounts
    c. In relation to the terms of Clause 4 of the lease cited above, it is argued:

> *The tribunal will note that the clause imposes a duty on the claimant*
>
> > *To ascertain and certify the amount: this has been done, not only in compliance with the terms of the lease, but also as a matter of law.*
> >
> > *To serve on the Lessee a copy of such certificate: this has also been done by (a) serving the certified copy of the accounts to the shareholder-defendant in accordance with the Company Act 2006, and (b) by sending an invoice to the defendant.*
>
> *The requirement is for the GA "to certify", and for the GA to provide "such certification". No specific form, or format of the certification is set out in the Lease, and none ought to be imported from any external source.*
>
> *That is to say, that the tenant must be provided with whatever is the certificate that has been issued by the GA. If the GA certifies the accounts through its annual GM by way of the accountant's report, then that is "the certificate", and that is what must be provided, and has been provided.*
>
> *The requirement under Clause 4 is not expressed in the terms that the invoice must be accompanied by a certificate, or that the invoice itself must contain a certificate on the face of the document.*

33. Counsel for the Respondent relied on various cases including *Arnold* v *Britton* [2015] UKSC 36, *Wigmore Homes (UK) Limited* v *Spembly*

Works [2018] UKUT252 (LC) and *Urban Splash Works Ltd* v *Ridgway* [2018] UKUT 32 (LC).

34. The following are the conclusions drawn by Counsel, Mr Kirk.

> *a. The Tribunal should first seek to give effect to the terms of the lease with reference to the words actually and consensually used by the contracting parties and adopted by and binding on their successors;*
>
> *b. This lease clearly and unambiguously by its written terms requires the landlord (A) both to ascertain and to certify the maintenance charge which, once served by the lessor on the lessee, binds both sides and requires an account to be taken obliging the lessee to pay (or to be reimbursed) within 14 days of service;*
>
> *c. The authorities do not say that the failure to comply with this term disapplies any obligation to pay* any *service charge obligations, but that it may be a condition precedent in relation to a balancing payment (or potentially some other obligation) in a particular case depending on the wording of the lease;*
>
> *d. It makes no difference that the calculation has been undertaken by an accountant or other suitably qualified professional. Some leases require certification by independent third parties, this lease specifically requires certification by the lessor and not simply ascertainment by its accountant;*
>
> *e. The language used can only be taken to mean that the lessor may take any reasonable approach to ascertainment (it has to ascertain the amount, however it does so), but that it must certify that outcome;*
>
> *f. It is uncontroversial that no certificates have been provided in this case, and that A do not appear to have accepted that any certification is in fact necessary*

Reasons

35. The starting point is the "*function and significance of the certificate will depend on the terms of the agreement.*" [*Urban Splash Works Ltd* v *Ridgway* [2018] UKUT 32 (LC) at 77]

36. Further the form of any certificate also depends on the terms of the agreement but the certificate must be clear [*Powell and Co Investments Ltd* v *Alexsandrova* [2021 UKUT 10 (LC) at 23]

37. Yet further *"the general function of a certificate is to provide confirmation of facts relevant to the obligations of a party under a contract"* [*Powell and Co Investments Ltd* v *Alexsandrova* [2021 UKUT 10 (LC) at 24]

38. The certificate is only mentioned in Clause 4 Part II of the Fifth Schedule cited above.

39. It requires the Garden Association to:
    a. Ascertain and certify the finalised amount payable for the preceding year taking into account any credit in favour of the Lessee and
    b. Serve the Lessee with a copy of the certificate

40. The Lessee is required to pay:
    a. Any outstanding balance within 14 days of service of the certificate

41. The argument Mr Giani raises in relation to the annual accounts was considered in *Urban Splash* [op cit at 69]

> *69. I do not accept Mr McDonald's first submission. The annual accounts clearly do not contain the information required by paragraphs 4 and 5 of the fifth schedule to the Lease. They do not provide or certify the Service Rent itself, nor do they give credit for sums paid in advance by any individual leaseholder. It is impossible to tell from the accounts how much the respondents or any of their neighbours is required to pay.*

42. While the terms of this lease are not the same as that in *Urban Splash,* Clause 4 clearly requires certification of the amount of a finalised maintenance charge as well as any amount in credit in the reserve fund. The only accounts in the bundle were draft accounts for 2023/2024 and while these did set out the contribution of each flat and also the payment into the reserve fund, there is no certificate along with those accounts or in them.

43. The difficulty for the Applicant is the absence of any evidence of certification. The lease clearly makes an obligation on the Lessee to pay within 14 days of service of the certificate. The lease provides the service of a certificate as a condition precedent of a liability to pay the finalised amount.

44. The Tribunal accept that the lease does not prescribe the format or nature of any certificate and it is a matter for the Applicant how this is done. There is no evidence before the Tribunal that a clear certification of the amounts outstanding has been served on the Respondent.

45. The burden of proof is on the Applicant to show that the amounts claimed are payable and they have not done so.

46. The remaining issues are merely found for completeness sake and the matter is to be remitted to the County Court to determine the issue of costs

Costs

47. The Applicant sought to claim costs in the County Court proceedings under Clause (p)(i) of Part I of the Second Schedule.

48. The Applicant is not privy to that part of the lease as is clear from Clause 4(c) cited above such that they cannot rely on the Clause they seek to.

49. However the wording of Clause 2(b) Part II of the Fifth Schedule is a clear contractual right to claim costs incurred in collecting the charge and legal costs are therefore payable in principle.

Late payment fees

50. Counsel for the Applicant accepted that the lease does not provide for the levying of a late payment fee. Administration costs in carrying out its business are allowed under Clause 2(e) Part II of the Fifth Schedule but that must mean reasonable costs actually incurred.

Interest

51. Counsel for the Applicant also accepted that there was no contractual right to interest in the lease. In fairness the pleadings in the County Court were for interest under section 69 of the County Court Act 1984 which is a matter for that Court. No interest is payable to the Applicant under the terms of the lease.

Signed DDJ Samuel Date 15 December 2025

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).