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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0012/06/20

In the matter of No. 38 Golate Court, Golate Street, Cardiff, CF10 1EW

And in the matter of an Application under Section 19 and Section 27(A) of the Landlord and Tenant Act 1985

Applicant: RMB 102 Limited

Respondent: Dr Mahamaz Mohammad Ali & Mr Jamil Abdillayev

DECISION

Before: Tribunal Judge AR Phillips (Legal Chair)
Mr K Watkins (Surveyor Member)
Dr A Ash (Lay Member)

The matter was initially listed for a remote Cloud Video Platform hearing but it was agreed by the parties shortly before the due hearing date that the matter could proceed as a hearing on the papers.

On the 25th May 2021 the Tribunal was unable to reach a determination and the matter was adjourned, with further directions being issued, to 3rd August 2021. The Tribunal considered matters on 3rd August 2021 and again 28th September 2021. The Tribunal issued further Directions on 5th October 2021.

BACKGROUND

1. Proceedings had been issued in the Cardiff County Court by the Applicant in relation to alleged non-payment of service charges for the period 01/01/2018 to 31/12/2019, reserve charge contributions and balancing charges under the terms of the lease.

2. An order of the Cardiff County Court issued on 25/06/20 transferred the question of the determination of the above service charges to the Leasehold Valuation Tribunal. The Applicant has requested that further arrears for 2020 are included in the sums to be determined by the Tribunal. The Tribunal is concerned only with the determination of the matters that have been transferred from the County Court and not additional matters that may become the subject of a future claim by the Applicant.

THE LEASE

3. The Applicant is the freeholder of the development known as Golate Court, Golate Street, Cardiff CF10 1EU, their title being registered at the Land Registry with title number WA125851. The Respondent is the lessee of 38 Golate Court, Golate Street, Cardiff CF10 1EU ("the Flat") their title being registered at the Land Registry with title number CYM296130. The development at Golate Court consists of 49 residential units and 2 commercial units with 6 parking spaces. The Respondent's lease is dated 18th May 2006 ("the Lease") and is for a term of 125 years from 1st July 2005. The Respondents purchased the Flat on 27th July 2011.

4. The Lease contains the usual provisions for the demanding and payment of service charges.
   The relevant provisions are as follows:-

   a) In clause 3(20) the Lessee covenants with the Lessor to

      "Pay by way of further or additional rent the Interim Charge and the Service Charge at the times and in the manner provided in the Fourth Schedule…."

   b) In summary, the Fourth Schedule ("the Schedule") defines the relevant terms by which the Service Charge is to be calculated. It is unnecessary for the purposes of this decision to repeat the provisions of the Schedule verbatim, but the following sections are significant.

   c) The Schedule divides expenditure into Category A Expenditure and Category B Expenditure.

   d) Clause (4)(i) of the Schedule states that Category A Expenditure "means the total expenditure incurred by the Lessor in complying with its obligations (inter alia) under Clause 5(5) hereof being the expenditure the Lessor (acting reasonably) shall consider relates to the residential parts of the Building as a whole and/or is incurred solely for the general benefit of the Lessee and other Flat Owners less the Category B Expenditure"

   e) Clause (4)(ii) of the Schedule states that Category B Expenditure "means the total expenditure incurred by the Lessor in complying with its obligations (inter alia) under Clause 5(5) hereof being the expenditure the Lessor (acting reasonably) shall consider relates to the Building as a whole"

   f) In the Particulars of the Lease the Lessee's Percentage Contribution to the Service Charge is set at 1.9% of the Category A Expenditure and 1.44% of Category B Expenditure

   g) The Interim Charge is to be paid to the Lessor by equal half yearly payments in advance on the Rent Days in each year.

h) Clause 2(ii) of the Schedule states that "if the Interim Charge paid by the Lessee in respect of any Accounting Period exceeds the Service Charge for that period then such surplus shall be carried forward by the Lessor and credited to the account of the Lessee in computing the Service Charge in the next succeeding Accounting Period as hereinafter provided"

5. Clause 5 of the Lease contains the usual Lessor covenants including to insure 5(5)(A), to repair 5(5)(B), to decorate 5(5)(C) and 5(5)(D), hire video entry phone system 5(5)(I), to keep the service charge at the lowest reasonable figure 5(5)(L), and to provide a sinking fund 5(5)(M). The foregoing is expressed to be at clause 5(5) "Subject to and conditional upon payment by the lessee of the Service Charge and Interim Charge. The lease contains a provision at for the recovery of interest at 4% above the National Westminster bank base rate on sums owed at clause 3(20) of the Lease.

STATUTORY PROVISIONS

6. In addition to those contractual lease provisions as to the demanding and recovery of service charge, since these are leases of "dwellings", the demanding and payment of service charge is further subject to the various statutory rights, obligations and mechanisms under the Landlord and Tenant Acts 1985 and1987, and the regulations made thereunder. The most important and relevant of these, for the purposes of these applications, are the following:-

   i) by section 21B of the 1985 Act, "a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants in relation to service charges", and a tenant may withhold payment of a service charge which has been demanded from him if this requirement is not complied with. The sum demanded is not therefore due and payable unless and until this requirement is complied with.

   ii) since these properties are in Wales, the relevant summary of rights and obligations to be served is that prescribed by regulation 3 of the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (Wales) Regulations 2007 [SI 2007/3160 (W. 271): "the Welsh Regulations"].

7. Without setting this out in full, the key points to note are that the summary must be in both Welsh then English, in precisely the form set out in the regulations; and must refer to the tenant's right to make an application to a "leasehold valuation tribunal", the name by which this Tribunal is still known in Wales, as opposed to its English counterpart the First-Tier Tribunal (Property Chamber). Whilst trivial errors in the summary of rights and obligations may to some extent be disregarded and will not invalidate the demand with which it is served (see Countryside (Residential) South West Limited v. Mark Tudor Roberts [2017] UKUT 0386 LC – incorrect font size, or English language version preceding the Welsh one), service of completely the wrong summary, or no summary at all, clearly has the effect prescribed by section 21B. The sums demanded are not payable until a valid demand is served.

iii) By section 47 of the 1987 Act, any written demand for service charge must contain the name and address of the landlord or (if that address is not in England and Wales) an address at which notices may be served by the tenant on the landlord. If the demand does not contain that information, then it "shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished."

iv) By section 48 of the same Act, the landlord must also furnish the tenant with an address at which notices may be served on him by the tenant, and similarly, where a landlord fails to comply with this obligation, any rent, administration or service charge otherwise due from the tenant "shall be treated for all purposes as not being due." until the landlord complies.

v) by section 20B of the 1985 Act, "(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."

vi) by section 27A(1) of the 1985 Act, the Tribunal's jurisdiction on an application extends to determining "whether a service charge is payable, and if it is, as to." [amongst other matters]

(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."

vii) by section 19 of the 1985 Act, the amount of all residential service charges payable is to be "limited accordingly" to the extent to which the relevant costs on which they are based were "reasonably incurred", and to which any works or services provided were of a "reasonable standard".

8. The Applicant has sought to claim from the Respondent the Process Fee and an Arrears Referral Fee. Such sums should be claimed in accordance with the Administration Charges (Summary or Rights and Obligations) (Wales) Regulations 2007 "the 2007 Regulations"and the provisions of sections 1 and 2 of the Commonhold and Leasehold Reform Act 2002, Schedule 11 "Schedule 11".

9. Without setting them out in full, the 2007 Regulations state that demand for payment of an administration must be accompanied by the required summary of rights and obligations set out in clause 2 of 2007 Regulations. The 2007 Regulations state:

(1) This summary, which briefly sets out your rights and obligations in relation to administration charges, must by law accompany a demand for administration charges. Unless a summary is sent to you with a demand, you may withhold the administration charge. Th summary does not give full interpretation of the lawand if you are in any doubt about your rights and obligations you should seek independent advice.

(2) An administration charge is an amount which maybe payable by you as part of or in addition to the rent directly or indirectly-

for or in connection with the grant of an approval under your lease, or an application for such approval;

for or in connection with the provision of information or documents;

in respect of your failure to make any payment due under your lease; or

in connection with a breach of covenant or condition of your lease.
If you are liable to pay an administration charge, it is payable only to the extent that the amount is reasonable.

10. Schedule 11, Part 1 states:

Meaning of "administration charge"

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

THE SERVICE CHARGE DEMANDS AT ISSUE

11. The Applicant's Statement of Case dated 07/08/20 sets out the Service Charge and Administration Charges to be considered by the Tribunal relating to the period between 01/01/2018 and 01/01/2020 as follows:

Service charge 01/01/2018 – 30/6/2018	£920.75
Balancing service charge	£94.29
Reserve Fund 01/07/2018 – 31/12/2018	£46.50
Service charge 01/07/2018 – 31/12/2018	£1,130.87
Reserve Fund 01/07/2019 – 30/06/2019	£46.50
Service charge 01/01/2019 – 30/06/2019	£1,130.87
Reserve Fund 01/07/2019 – 01/01/2020	£46.50
Service charge 01/07/2019 – 31/12/2019	£1,161.27

The Applicant has also sought further arrears which are said to have accrued as follows:

Service charge 01/01/2020 – 30/06/2020	£1,161.27
Reserve Fund 01/01/2020 – 30/06/2020	£46.50

Interest is claimed on the above sums.

12. The Applicant has sought further sums incurred in the making of the Application

<u>Administration Charges</u>	
Process Fee - review and reconciliation	£90
Preparation of arrears referral	£180
<u>Disbursements</u>	
Land Registry charges	£8
Court issue fee	£410
Legal Costs (as at 18/05/21)	£11,280

VALIDITY OF SERVICE CHARGE DEMANDS

Service Charge Demand 01/01/2018 – 30/6/2018

13. The Applicant was initially unable to produce a copy of the service charge demand for this period but provided a copy of the Tenants Statement dated 09/07/2018. Subsequently the Applicant provided a copy of the service charge demand issued by the previous managing agents SDL Property Management dated 21st December 2017. The SDL demand includes the balancing charge of £94.29.

14. The Tenants Statement does not contain any summary of the rights and obligations required by section 21B of the 1985 Act. The service charge demand issued by SDL Property Management contains the wrong summary of rights and obligations, in that the Welsh version is missing. Given that the property is situated in Wales this somewhat unfortunate. The summary that is provided is clearly wrong on the face of it as the title of it states that it is "FOR ENGLAND ONLY".

15. Having considered the case of Countryside (Residential) South West Limited v. Mark Tudor Roberts [2017] UKUT 0386 LC and the guidance set out previously in this decision, the Tribunal is satisfied that neither the 2017 service charge demand, nor the 2018 Tenants Statement contain the required information and are invalid. Accordingly, the sums demanded for this period are not payable until such time as a valid demand is served.

Service Charge Demands 01/07/2018 – 31/12/2018, 01/01/2019 – 30/06/2019, 01/07/2019 – 31/12/2019

16. The Tribunal has been provided with copies of the demands for the above periods issued by the new managing agents Warwick Estates who replaced SDL Property Management Limited. The first demand is dated 29/01/2019 and bills for the periods 01/07/2018 – 31/12/2018, 01/01/2019 – 30/06/2019 and includes the reserve fund contribution. The second demand is dated 10/07/2019 and covers the period 01/07/2019 – 01/01/2020 and includes the reserve fund contributions.

17. Both of the service charge demands state that the monies are collected on behalf of E&J Estates and state that the Landlord for the purposes of Sections 47 & 48 is E&J Estates whose address is Vaughan House, Winchester SO23 7RX. The Landlord according to the Land Registry title WA125851 is RMB 102 Limited, Prospect Place, Moorside Road, Winchester SO23 7RX and also of enquiries@endjestates.co.uk

18. On the face of it the demands do not comply with section 47 of the 1987 Act because the Landlord's name is incorrect and to a much lesser extent the address is incorrect.

19. In the Applicant's Statement dated 28/06/2021 the Applicant states that E&J Estates act as agents for the Landlord and that otherwise the demands are compliant in that they contain the correct summary rights and obligations (in Welsh and English).

20. The Applicant seeks to argue that the issue not having been raised by the Respondent the Tribunal should consider the judgment of Beitov Properties v Martin [2012] UKUT 133 (LC) and that no purpose is served by the Tribunal in requiring the Landlord to serve a fresh

demand. The Beitov case related to an appeal by the Landlord against the finding by the Leasehold Valuation Tribunal (LVT) regarding a service charge demand that had given the name of the landlord, but not his address and looked at issues in relation to sections 47 and 48 of the 1987 Act. Whilst the Upper Tribunal was on one hand critical of the LVT taking the point, it is important to note that they dismissed the appeal of the Landlord, ie agreed that the service charge demands were non-compliant with the legislation.

21. The Landlord in this case has the benefit of a professional Management Company (whose fees are paid in part, at least, by the lessees, including the Respondent), legal advice from solicitors and counsel. The Respondent is unrepresented. The Tribunal has raised this point and given the Applicant an opportunity to address it and it would, in the opinion of the Tribunal, be inappropriate for the Tribunal to then ignore it, to the detriment of the Respondent.

22. The Applicant has referred the Tribunal to the case of Roberts v Countryside Residential (South West) Ltd [2017] UKUT 0386 (LC). In that case the LVT had identified a number of defects in service charge demands but had decided that the defects could be corrected retrospectively by a letter before action. In this matter the Applicant issued a letter before action through their solicitors SLC solicitors dated 16/08/2021 and a final letter dated 20/02/2021. The two letters issued by the solicitors refer to their client as RMB 102 Limited, to Flat 38 Golate Court, to the arrears outstanding under the terms of the lease. What the letters do not do is to correct the original defect in the previous service charge demands ie the failure to identify correctly the Landlord for the purposes of section 47 of the 1987 Act. At no point do either of the letters identify RMB 102 Ltd as the Landlord, or seek to explain why E&J Estates were incorrectly referred to on the previous service charge demands.

23. Common sense may suggest that it is clear as to what the service charge demands relate to, and also the two letters, but what we are left with is a situation where the service charge demands refer to E&J Estates and the two letters refer to RMB 102 Limited. They are two entirely separate legal entities. The Applicant has referred to the case of Elim Court RTM Company Limited v Avon Freeholds Limited [2017] 2 P&CR 8. As the Applicant states, this was not a case about service charge demands but related to the validity of a notice under the Commonhold and Leasehold Reform Act 2002. and has set out part of the judgment of Lewison LJ in the Applicant's Statement dated 28/06/2021.

24. For the purposes of this decision the Tribunal is setting out the relevant paragraph of Lewison LJ, in full.

"52. *The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case: see [32] [in Natt v Osman]. The intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole: see [33]. Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on*

the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid: see [34]. One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In the latter case the information is likely to be viewed as of secondary importance. In this connection it must not be forgotten that while the substantive provisions of a bill may be debated clause by clause, a draft statutory instrument is not subject to any detailed Parliamentary scrutiny. It is either accepted or rejected as a whole. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity."

25. Considering the pointer that has been identified in the preceding paragraph, the information that has not been provided in this case is the identity of the Landlord. Section 47 of the 1985 Act states:

47.Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a)the name and address of the landlord, and

(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

26. It is clear from section 47 that the requirement to provide the Landlord's name is particularised in the statute and is not contained in general provisions of the statute. Accordingly, the Tribunal is satisfied that the Service Charge demands for the periods 01/07/2018 – 31/12/2018, 01/01/2019 – 30/06/2019, 01/07/2019 – 31/12/2019 do not contain the required information and are invalid. Accordingly, the sums demanded for this period are not payable until such time as a valid demand is served.

S20B LANDLORD AND TENANT ACT 1985

27. In the light of findings of the Tribunal in relation to the validity of the service charge demands as set out above, it is a matter for the Applicant to consider whether they are entitled to, or wish to, reissue the service charge demands to the Respondent bearing in mind the provisions of s20B of the Landlord and Tenant Act 1985.

S19 LANDLORD AND TENANT ACT 1985

28. Notwithstanding the above findings in relation to the validity of the Service Charge demands, the Tribunal is required to make a determination under s19 of the Landlord and Tenant Act 1985 as set out below:

(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; 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.

29. The Tribunal has been provided with the following documents:
    a. Applicant's Statement of Case dated 07/08/2020
    b. Respondent's Statement of Case 30/10/2020
    c. Applicant's Response to Respondent's Statement 03/11/2020
    d. Scott Schedules
    e. Applicant's Statement 11/05/2021
    f. Applicant's Statement 28/06/2012
    g. Respondent's Statement 14/07 2021 in response to Directions 11/06/2021
    h. Applicant's Statement 21/10/2021
    i. Email from Respondent 21/10/2021

30. In setting out its determination the Tribunal would make a number of initial points:

    There will be a range of views as to the level and extent of works that are required to manage an estate such as Golate Court.

    Put simply, the Tribunal's function is to determine whether those works have been carried out, are recoverable under the terms of the lease, have been reasonably incurred and are of a reasonable standard.

    Given the volume of documentation provided it is not possible to comment on every sentence. The Tribunal however considers it helpful to make a number of general findings regarding the Tribunal's assessment of the evidence before it.

<u>General Findings in Relation to the Applicant's Evidence</u>

31. The evidence provided by the Applicant in the statements in relation to the sums contained in the service charge demands is in the opinion of the Tribunal generally cogent, comprehensive, relevant and documented, in the main, with reference to exhibited invoices for works carried out. The objections from the Respondent have been fully dealt with, in turn, in the statements. The general assertion by the Respondent that none of the services has been provided is at odds with the invoices and evidence that has been provided by the Applicant. Accordingly, the Tribunal is satisfied that the works and services have been carried out.

<u>General Findings in Relation to the Respondent's Evidence</u>

32. The Tribunal appreciates that the Respondent is a litigant in person, but the Respondent's statements contain, generally, limited evidence addressing the relevant issues in hand for the Tribunal. There is reference to matters that are not relevant to the issues for the Tribunal, for example, failure to provide information from 2011 – 2018, complaints procedure, general management issues, and the respondent's personal circumstances. The Respondent has sought to challenge expenditure, for example, referring to increases from 2015 figures. These figures are approximately 3 years out of date in relation to the service charge demands the Tribunal is dealing with. This is of limited relevance, or assistance.

33. The Respondent has not provided any evidence to suggest that expenditure has been incurred unreasonably, or provided alternative quotes for works carried out or costs of buildings insurance. We accept that the works may not have been carried out in as timely a manner, or to the standard that the Respondent may wish, but the works fall within the range of what the Tribunal considers reasonable in the circumstances.

34. The criticisms are at times what may be described as "management issues". There will inevitably be differences of opinion as to what is required and what is satisfactory, and the opinions of all involved, including other lessees, have to be taken into account by the Applicant when managing the building. The Respondent has not challenged the expenditure as falling outside the service charge provisions of the lease. The provisions are set out earlier in this decision and the Tribunal is satisfied that the sums invoiced fall within the service charge provisions of the Lease.

Scott Schedules

35. For the reasons set out in the preceding paragraphs and the comments below, the Tribunal is satisfied that the sums set out in the Scott Schedules A, B and C are in accordance with s19(1) and (2) of the Landlord and Tenant Act 1985 and fall within the service charge provisions of the lease. These sums are recoverable for the period 01/01/2018 to 31/12/2019, subject to the exceptions and comments set out below.

36. As previously indicated the Tribunal can make no determination of any Service Charges payable from 01/01/2020 onwards, as these are not the subject of the original claim in the County Court. The Tribunal has been provided with limited information in respect of the invoices for the period prior to 17/5/2018 although some invoices eg for utilities are available. Where not fully documented, the sums claimed under the various headings are in the judgement and experience of the Tribunal reasonable.

Repair and Maintenance

37. As set out above the works may not be as timely as the Respondent would wish, or to the standards they might wish, but they are in the judgement and experience of the Tribunal, reasonable. There are management issues in relation to a number of areas eg Garden and Grounds Maintenance ie that the work has not been done to the standard that the Respondent would wish as per paragraph 31 above.

Professional Fees

38. In the judgement and experience of the Tribunal these fees are necessarily incurred in the proper management of the Estate and are reasonable.

Buildings Insurance and Insurance Credit Charges

39. The credit charges relate to the instalment facility provided for the buildings insurance. The buildings insurance is a legal requirement and in the judgement and experience of the Tribunal, the premiums and interest charges are necessarily incurred and are reasonable.

Access Control

40. The Applicant has provided a reasonable explanation in relation to this and details of how this has been changed to a cheaper alternative for the Lessees.

Security Expenses

41. The main front door and front gate had been damaged and the main front door required replacement. The main front door was of a bespoke nature and until such time as it could be constructed and replaced, in the judgement and experience of the Tribunal it was necessary and reasonable to appoint the security company to prevent unauthorised access to the building which risked compromising the safety and security of the building.

42. The problems with unauthorised access to the building were caused by either the lessees, their tenants or by unauthorised third parties attempting to, or gaining access, to the building. These are not the fault of the Applicant and do not make the sums claimed unreasonable.

Common Area Repairs

43. This is routine maintenance and as such would not covered by insurance. The Applicant has provided a reasonable explanation for this.

Reserve Fund

44. As set out earlier the Lease specifically provides for the establishment of a sinking fund. In the judgement and experience of the Tribunal a prudent Managing Agent should collect contributions from lessees to such a fund and would be open to criticism for not doing so.

Commercial Units/Parking Area

45. The Lease contains reference to Category A Expenditure and Category B Expenditure. Broadly speaking, Category A Expenditure relates to expenditure in relation to the residential parts of the Building and Category B relates to the expenditure of the Building as a whole. The two types of expenditure are defined in paragraphs (4)(i) and 4(ii) of the Fourth Schedule the Lease.

46. The Lease is the document that sets out the contractual position between the Lessor and Lessee and would have been the document the Respondent would have been advised upon when she purchased the Property. The Annual Budget upon which the Service Charges are based divides the total budgeted expenditure between Estate Charge (51

units) and Residential Units (49 units). The Accounts produced at the end of the year allocate expenditure between Schedule 1 – Estate, Schedule 2 – Residential Units and Schedule 3 – Car Park.

47. The Applicant has accepted that there is an error in the year end accounts for the period 01/07/2018 to 30/06/2019 whereby the Management Fees (£10,856.45) and the Buildings Insurance (£18,711.57) have been allocated entirely to Schedule 2, the Residential Units, rather than to Schedule 1 the Commercial Units. As a result, the share payable by the Respondent is higher than it should be. Dividing the Management Fees by 51 and 49 respectively results in figures of £212.87 and £221.56, the difference being the required correction ie £8.69 for the period in favour of the Respondent.

48. Performing a similar exercise for the Buildings Insurance results in a correction of £14.97 in favour of the Respondent. This results in a reduction of £11.83 for each Service Charge Demand during the period 01/07/2018 to 30/06/2019.

49. The accounts for the period 01/07/2019 to 31/12/2019 have yet to be finalised but the Applicant accepts they will need correcting because the budget is again incorrect.

50. Accordingly, the Tribunal makes an allowance in respect of the Buildings Insurance and Residential Units of £5 and £10 respectively for the 6 month period that has been the subject of Service Charge demands up to 31/12/2019.

Process Fee and Preparation of Arrears Referral

51. Due to the failure to pay the Service Charge the Applicant has had to issue proceedings to recover the sums owed and this has resulted in additional work for the Applicant. In the judgement and experience of the Tribunal these fees are reasonable.

Land Registry Fees

52. In the judgement and experience of the Tribunal these fees are reasonable.

Court Fee

53. This would seem to fall outside the Tribunal's remit and is a matter for the County Court to consider.

Water Ingress

54. There has been a significant amount of debate in the documentation before the Tribunal regarding the water ingress at the Respondent's property. The situation is that remedial works which relate to water ingress caused by problems with the membrane at the balcony of 44 Golate Court have been carried out. Matters appear to have reached something of an impasse between the Applicant and the Respondent in relation to continuing water ingress around the patio doors.

55. The Applicant's view is that the remaining works cannot be carried out until such time as the water ingress through the patio door seals has been remedied, this being the cause of

the problem. The reasoning being, that it is pointless carrying out these works until the defect causing the damage is repaired. The Applicant contends that under the terms of the lease the responsibility for the repair of the patio doors is the responsibility of the Respondents.

56. The Structure is specifically defined in the Lease at clause 1(18):

"the Structure" means the exterior and main structure of the Property including the foundations roofs main walls service ducts electrical intake ducts ventilation shafts ceilings and floors and ceiling and floor joists thereof but excluding any glass in any such walls any false ceilings internal partitions all internal plaster and other finishes of walls partitions or ceilings doors and door frames (save where internal to any common parts) and any floorboards and floor services"

57. In the lease the Lessor is responsible for the maintenance of the Structure of the Building at clause 5(5)(B) and the Lessee responsible for the maintenance of the Demised Premises (clause at 3(17)). The Demised Premises are more fully defined in Schedule 1 of the lease.

"*The internal plastering covering and plaster work of the walls bounding the Demised Premises and the doors and door frames and window frames fitted in such walls (other than external surfaces of such doors door frames and window frames) and the glass fitted in such window frames and the staircases (if any) within the demised Premises and"*

58. The Tribunal is satisfied that the Applicant is correct in its interpretation of the lease that the doors and door frames fall outside the definition of the Structure. As such the Tribunal is satisfied that the responsibility for the maintenance of the patio door seals is that of the Respondent. The difficulty for the Tribunal is that there is no evidence before the Tribunal, upon which it could reasonably rely to determine the cause of the leaks around the patio doors.

59. The Directions from the Tribunal dated 11/06/2021 at paragraph 1(g) requested further details of any such evidence from the Applicant. The response from the Applicant was to refer the Tribunal back to the evidence previously considered to be lacking by the Tribunal and we are no further forward. Having considered the matter further, the invoices from the roofing contractor Infinite Solutions (Cardiff) Limited are specific and the most recent invoice referring to the property is dated 09/03/20 detailing work at the property on 07/11/2019 and 22/11/19. Ultimately, whoever has the responsibility for carrying out and paying for these further repair works is an academic point, the reason being that any such costs for these future works have not been invoiced or charged for in the service charge demands which are the subject of this determination.

Surplus

60. Although not part of the matters for consideration by the Tribunal, in 2015 – 2016 there was a surplus of £5776.51 which was transferred to the Reserve Fund. Under Schedule 4, clause 2(ii) of the Lease this should have been credited to the accounts of the Lessees. An appropriate credit should have been made to the Respondents for their share of this.

Determination

61. Accordingly, the Tribunal determines that the following sums are recoverable by the Applicant:

a.	Service charge 01/01/2018 – 30/6/2018	£920.75
b.	Balancing service charge	£94.29
c.	Reserve Fund 01/07/2018 – 31/12/2018	£46.50
d.	Service charge 01/07/2018 – 31/12/2018	£1,119.04 (deduction of £11.83)
e.	Reserve Fund 01/07/2019 – 30/06/2019	£46.50
f.	Service charge 01/01/2019 – 30/06/2019	£1,119.04 (deduction of £11.83)
g.	Reserve Fund 01/07/2019 – 01/01/2020	£46.50
h.	Service charge 01/07/2019 – 31/12/2019	£1,146.27 (deduction of £15)
i.	Process Fee - review and reconciliation	£90
j.	Preparation of arrears referral	£180
k.	Land Registry charges	£8
l.	Interest (see below)	£156.49
	Total payable	**£3973.38**

62. Interest was said to be claimed in accordance with the terms of the lease on the arrears in the sum £269.38 on the Applicant's Claim Form. The Tribunal is unable to ascertain how this figure has been calculated and it is unclear as to the exact date the claim was issued in the County Court on the documents provided. The revised figure payable by the Respondent (including the Process Fee, Preparation of Arrears Referral, Land Registry Charges but not the Court issue fee) is £3816.89. The applicable interest rate is 4.1% per annum. The sums have been owing for at least a year at the time of proceedings been issued. Applying this rate to £3816.89 produces a figure of £156.49. The Tribunal determines that in the circumstances a figure of £156.49 in respect of interest payable by the Respondent is appropriate, but notes that it will be a matter for the County Court to further consider when the matter is returned there.

Costs

63. The Applicant has asked the Tribunal for an order for costs recoverable pursuant to clauses 5(5)(O) & (P) of the lease and the Respondent has requested that the Tribunal make an order under Section 20c of the Landlord and Tenant Act 1985. In the light of our determination that none of the service charge demands have been correctly demanded, it is appropriate, in the opinion of the Tribunal, to make an order that none of the costs incurred by the Applicant are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

64. The Tribunal in Wales has, in addition, a very limited power to award costs up to £500 against a party to Tribunal proceedings, these are:

a) where the application has been dismissed by the Tribunal because it believes the application is frivolous or vexatious or otherwise

b) an abuse of process; or

c) where a person has acted 'frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings'.

The Respondent may be considered to have been fortunate in this matter, regarding the finding in relation to the validity of the service charge demands. That said, in the circumstances, the Tribunal is satisfied that the above criteria do not apply in this case to the actions of the Respondents, (or the Applicant in pursuing this matter) and makes no other order as to costs.

Dated this 13th day of December 2021

AR Phillips

Tribunal Judge