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**HM Courts  
& Tribunals  
Service**

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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
EASTERN REGION  
LEASEHOLD VALUATION TRIBUNAL**

**Case No** : CAM/00KA/LSC/2012/0009

**Property** : Flats 1 & 2, 35 King St, Luton LU1 1HS

**Claimant** : Chris Barry Ltd

**Defendants** : Mr Mohsin Ali Ravjani

**Inspection** : 15<sup>th</sup> May 2012

**Hearing** : 15<sup>th</sup> May 2012

**Determination** : 15<sup>th</sup> May 2012

**Written Decision** : 19<sup>th</sup> June 2012

**Tribunal** : Mr S Reeder (lawyer chair)  
Miss Marina Krisko BSc (Est Man) FRICS (valuer member)

**Decision** : Determination of the liability for, and reasonableness of, service charges and administration charges following a transfer from the county court

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**DECISION**

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## DECISION

### *The service & administration charges*

*The following service and administration charges are determined by this Tribunal to be reasonable and payable :*

<i>Ground rent to 25<sup>th</sup> March 2011</i>	<i>For the Court</i>
<i>Building maintenance</i>	<i>Nil</i>
<i>Share of buildings insurance</i>	<i>£ 524.18</i>
<i>Management fees &amp; disbursements</i>	<i>£ 200</i>
<i>Managing agents fees – debt chasing – prep of proceedings</i>	<i>£ 550</i>
<i>Estimated reserve</i>	<i>£ 200</i>
<i>Share of electricity</i>	<i>£ 6,394.42</i>
<i>Share of water charges</i>	<i>£ 1,138.70</i>
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<i>Total</i>	<i>£ 9,007.30</i>

### *The costs of the Tribunal proceedings*

*As this matter was a transfer at the direction of the county court this Tribunal makes no determination as to whether to make an order pursuant to section 20C of the Landlord & Tenant Act 1985*

### *Transfer back to the County Court*

*By order dated 12<sup>th</sup> January 2012 (received by the Tribunal on 20<sup>th</sup> January 2012) District Judge Carr made an order transferring this county court claim (No.1QT11243) to the Leasehold Valuation Tribunal for a determination in relation to the service charges claimed in those proceedings. This matter is now transferred back to the Watford County Court to enable any party to apply to the court on any relevant matter including payment of court fees, costs within the court proceedings, interest and enforcement. The parties are reminded that paragraph 4 of the Order of District Judge Carr dated 12<sup>th</sup> January 2012 provides, “there shall be a further directions appointment to consider the further conduct of the proceedings and to consider, amongst other things, whether judgement should be set aside or varied or whether to order an account to be taken. This hearing will be arranged once the RPTS have concluded their enquiry and the file has been returned to the County Court”.*

## REASONS

### Procedural history

1. This matter was commenced by the claimant landlord in the Watford county court in May 2011. By order dated 12<sup>th</sup> January 2012 (received by the Tribunal on 20<sup>th</sup> January 2012) District Judge Carr made an order transferring this county court claim (No.1QT11243) to the Leasehold Valuation Tribunal for a determination in relation to the service charges claimed in those proceedings. A Directions Order was made by the Tribunal on 12<sup>th</sup> February 2012. The Tribunal has carried out a visual inspection of the subject flats and the internal communal parts of the block in which they are situated on 15<sup>th</sup> May 2012 and conducted a hearing that same day. The Tribunal has completed its determinations on 15<sup>th</sup> May 2012. Whilst the county court proceedings are brought against Mr Mohsin Ali Ravjani only the leases in respect of both flats are demised jointly to Mr Ravjani and his wife Shabira Ravjani.

### The relevant service & administration charges

2. The county court claim form and particulars of claim dated May 2011 set out the service and administration charges claimed as at 24<sup>th</sup> May 2011 as follows–

Ground rent to 25 <sup>th</sup> March 2011	£ 858.46
Building maintenance	£ 500
Share of buildings insurance	£ 524.18
Management fees & disbursements	£ 550
Managing agents fees – debt chasing – prep of proceedings	£ 550
Estimated reserve	£ 2,000
Share of electricity	£ 6,394.42
Share of water charges	£ 1,138.70
 Total	 £ 12,515.76

### The relevant law – service charges

3. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. The relevant sections are set out below (adopting the numbering of the Act).

#### 18. Meaning of 'service charge' and 'relevant costs'

- (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*

- (a) Which is payable, directly or indirectly, for services, repairs, maintenance, improvements<sup>1</sup> or insurance or the landlord's costs of management, and
  - (b) The whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose –
- (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19. Limitation of service charges : reasonableness

- (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 reasonable 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.

Section 20C : Limitation of service charges : costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made –
- (a) .....
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal.

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<sup>1</sup> 'Improvements' were added to the definition of 'service charge' by the Commonhold & Leasehold Reform Act 2002

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

27A. Liability to pay service charges : jurisdiction

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
- (a) *the person by whom it is payable,*
  - (b) *the person to whom it is payable,*
  - (c) *the amount which is payable,*
  - (d) *the date at or by which it is payable, and*
  - (e) *the manner in which is payable.*

**The relevant law – administration charges**

4. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine the Payability and reasonableness of administration charges. The relevant sections are set out below (adopting the numbering of the Act).

Section 1 - meaning of "administration charge"

- (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.*

Sections 2 & 3 - reasonableness of administration charges

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

- (1) *Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that--*
  - (a) *any administration charge specified in the lease is unreasonable, or*
  - (b) *any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.*
- (2) *If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.*
- (3) *The variation specified in the order may be--*
  - (a) *the variation specified in the application, or*
  - (b) *such other variation as the tribunal thinks fit.*
- (4) *The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.*
- (5) *The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.*
- (6) *Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.*

Section 5 - liability to pay administration charges

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to--*
  - (a) *the person by whom it is payable,*
  - (b) *the person to whom it is payable,*
  - (c) *the amount which is payable,*
  - (d) *the date at or by which it is payable, and*
  - (e) *the manner in which it is payable.*
- (2) *Sub-paragraph (1) applies whether or not any payment has been made.*
- (3) *The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.*

*(4) No application under sub-paragraph (1) 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.*

*(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination--*

- (a) in a particular manner, or*
- (b) on particular evidence,*

*of any question which may be the subject matter of an application under sub-paragraph (1).*

### **The inspection**

5. The Tribunal has made a visual inspection of 35 King Street in the presence of Mr Thomas Hanley (director of Chris Barry Ltd), Mr David Abbott (of Prime Lettings, the managing agent), and Mr Mohsin Ali Ravjani (lessee of flats 1 & 2).
6. On the ground floor a communal entrance opens onto a communal hallway and staircase up to the first floor. There is one room ("Room 1") off of the ground floor hallway which the landlord states is used as an office. On the 1<sup>st</sup> floor half landing there is a room providing a WC and sink (with hot water from the communal boiler) which is solely for the use of Room 1. The Tribunal did not have access to Room 1 or the WC. The landlord states that Room 1 provides a 2 ring hob, fridge, electric shower with hot water from the communal boiler, and gas space heating provided by 2 radiators served by the communal boiler.
7. On the basement floor there is a small residential flat which is presently affected by the drains blocking and backing-up and does not appear to be occupied. This is not demised to the defendant.
8. Flat 1 is situated on the first floor and served by the communal staircase and a small landing. Mr Ravjani has let this flat and the tenants kindly permitted access for the Committee. The combined living room/kitchen provides 1 fridge freezer, 1 large freezer, a microwave, a cooker, the usual small kitchen appliances, 1 electric storage heater for space heating and a TV. The bedroom has one further storage heater and a TV. Both rooms have overhead lights. The

bathroom has electric lights, and electric shower and an extractor fan. Whilst not entirely clear it appears that an immersion heater is housed within boxing in the bathroom.

9. Flat 2 is situated on the second floor and is served by the communal staircase and a small landing. Mr Ravjani has let this flat and the tenants kindly permitted access for the Committee. The combined living room/kitchen provides 1 fridge, a cooker, deep fat fryer, toaster, kettle, and microwave with space heating provided by 1 storage heater. The bathroom provides an electric shower and an extractor fan although the latter was reported to be defective and not working. Whilst not entirely clear it appears that an immersion heater is housed within boxing in the bathroom. There is a smoke alarm in the entrance lobby which appears to be mains connected.
10. There are 4 lights to the communal staircase/hallway, although only 2 had bulbs in on inspection. There is a mains powered fire alarm system. The gas supply is separately metered for the basement & ground floors and 1<sup>st</sup> and 2<sup>nd</sup> floors. The electricity supply is common to the entire building and is metered by one 'smart meter' which is billed to the landlord. The water supply runs from the adjacent property at 37 King Street which appears to have a similar footprint and layout with commercial premises to the ground floor and one residential flat on each of the two floors above. Nos 35 & 37 King Street share the supply and the costs of the same. Since 2011 it has been metered.

### **The hearing**

11. The Tribunal was intended to include a lay member. In the event he is unavailable for the inspection and hearing. The matter has been raised at the outset of the hearing and the parties confirm they are content to proceed with the two member (lawyer chair and valuer member) Tribunal. The claimant has been represented at the hearing by Mr Thomas Hanley (director of Chris Barry Ltd) and by Mr David Abbott (of Prime Lettings, the managing agent). The defendant Mr Mohsin Ali Ravjani has appeared in person. Each has been given the opportunity to explain their respective arguments in relation to each of the component charges pleaded in the county court claim form and particulars of claim dated May 2011 which set out the service and administration charges claimed as at 24<sup>th</sup> May 2011. The Tribunal is grateful to all present for their succinct and useful oral submissions. In accordance with the Directions order dated 12<sup>th</sup> February 2012 the claimant has provided a bundle of relevant documents. During the hearing, and at the request of the Tribunal, the claimant has produced insurance documents relating to the block and the RICS management agreement between the claimant and Messrs Prime Lettings Ltd. The Tribunal has given careful consideration to the documents before it and the oral arguments made by those present.

### **The lease**

12. The Tribunal was provided with the leases for both flats 1 & 2, 35 King St which have been analysed during the hearing and in reaching the determinations herein. Both are held jointly by the defendant Mr Mohsin Ali Ravjani and his wife Shabira Ravjani. Recital A defines the service expenses as those outgoings specified in Schedule 4. Schedule 4 provides that the service expenses include the costs of maintenance, repair, renewal and redecoration of retained parts and service (Sch 4 para 1), lighting, cleaning and fuel and services consumed in the common parts (Sch 4 para 2), insurance (Sch 4 para 8), managing agents fees and disbursements relating to the collection rents and service charge contributions (Sch 4 para 9), reserve fund as estimated by the landlord and/or managing agent (Sch 4 para 15), and the costs of such other services as the landlord in his discretion decides to provide for the benefit of the tenants and occupiers in the interests of good management (Sch 4 para 13). Clause 2 provides that the rechargeable service rent shall be a fair proportion of the service expenses as determined by the landlord. Clause 2.2 provides that the service expenses shall be estimated by the managing agents as soon as is practicable after the beginning of the year and paid by the tenant by two equal instalments on 25<sup>th</sup> March and 29<sup>th</sup> September. Clause 2.3 provides for a final account of actual service expenses at year end and any balancing payment/credit to be made forthwith. Clause 6 sets out the landlord's covenants to include maintenance, repair, renewal and decoration (6.1.3), insurance (6.1.4), lighting and cleaning of retained/communal halls and landings (6.1.5), and annual production of a summary of service expenses (6.1.6).

### **The determinations**

#### **Demands & statutory information**

13. As a preliminary the Tribunal raised the issue of formal service charge demands. None were included in the bundle of documents submitted despite the fact that paragraph 3 of the Direction Order made on 12<sup>th</sup> February 2012 expressly required the same. Mr Abbott stated that he and his assistant at Messrs Prime Lettings Ltd were experienced in preparing and sending such demands and that an actual service charge demand was sent to the defendant at the end of 2010, that an estimated service charge demand was sent to the defendant in February 2011, and that he was certain that each would each have had the statutory information as to the lessees rights attached. The Tribunal accepts this evidence. The formal rent demands included in the bundle before the Tribunal clearly identified the landlord's name and address for the purposes of section 47 & 48 of the Landlord & Tenant Act 1987.

#### **Ground rent to 25<sup>th</sup> March 2011**

14. The sum of £858.46 is charged. Clause 1.1 of the lease provides for a ground rent of £100 p/a for the first 25 years from 2005. The Tribunal does not have jurisdiction to determine the payability or reasonableness of ground rents, and this remains a matter for the court.

#### **Building maintenance**

15. Prime Lettings were appointed to manage the property in the Summer of 2010. On 14<sup>th</sup> July 2010 Mr Abbott inspected the property and assessed what maintenance works were required to make the property “spick and span”. He estimated the cost and the sum of £500 was charged on account. In the event no works were carried out. The Tribunal is mindful that clause 2.2 of the lease provides that the service expenses shall be estimated by the managing agents as soon as is practicable after the beginning of the year and paid by the tenant by two equal instalments on 25<sup>th</sup> March and 29<sup>th</sup> September, and that clause 2.3 provides for a final account of actual service expenses at year end and any balancing payment/credit to be made forthwith.
16. The claimant is entitled to charge this on account cost. The estimated sum is reasonable for the works envisaged. However, as the works were not carried out the lease requires that the payment be credited forthwith after the year end account of actual expenses has been determined. It follows that whilst this charge was payable and reasonable when demanded it now stands to be re-credited to the defendant.

#### **Share of buildings insurance**

17. The sum of £524.18 is charged. The Tribunal’s jurisdiction on this case arises from the order of District Judge Carr dated 12<sup>th</sup> January 2012. This order explicitly states “the proceedings are referred to [the Tribunal] in order for them to determine the fairness of the service charges claimed (there being no issue about the amount due for insurance)”. It follows that this Tribunal makes no determination in relation to the insurance and presumes that the £524.18 is not disputed and is payable. During the hearing the claimant produced a letter from Messrs Green Insurance Group dated 9<sup>th</sup> September 2010 which details the premiums paid for 35 King Street for the period 2007-2011 inclusive together with the requisite invoices to the defendant.

#### **Management fees & disbursements**

18. The sum of £550 is pleaded as due and unpaid. Paragraph 9 of schedule 4 to the leases provides that the service expenses include managing agents fees and disbursements relating to the collection rents and service charge contributions. Clause 2 provides that the rechargeable service rent shall be a fair proportion of the service expenses as determined by the landlord.
19. The agent has stated during the hearing that they manage under a written RICS management agreement which provides for a fixed management charge of £200 per unit p/a. At the request of the Tribunal the landlord and agent produced this RICS management agreement made by them which relates to 35 King Street as a whole. This commenced from 14<sup>th</sup> July 2010 and is for a 12 month term. The basic charge is £400 p/a with provision for additional work to be charged at hourly rates commensurate with the seniority of the fee earner engaged.

20. The Tribunal accepts that the basic management fee of £400 p/a to manage 35 King Street is payable under the lease and is a reasonable sum having regard to the block managed and the RICS guidance on fee rates. The issue for determination is the fair proportion of that fee rechargeable to the defendant. The block contains 4 units as described earlier in this Decision. The Tribunal determines that a fair proportion is  $\frac{1}{4}$  of the total, being £100 per unit p/a. It follows that the reasonable sum payable as management charge by the defendant in respect of flats 1 and 2 is £200 p/a.

### **Managing agent's fees – debt chasing – prep of proceedings**

21. The sum of £550 is pleaded as due and unpaid under this item description. This relates to the costs of the county court proceedings. The component charges which make up this sum are set out in a letter from Prime Lettings to the defendant dated 15<sup>th</sup> April 2011. These are the costs of preparing a schedule of unpaid bills (3 hours), of preparing a letter before action and enclosures (2 hours), of preparing the landlord's witness statement (4 hours), of attending on the landlord to finalise the witness statement (1 hour), and of preparing and issuing the county court claim using the Money Claim Online facility (1 hour). The work was done by Mr Abbott. The charge rate is £50 p/hour.
22. Paragraph 9 of schedule 4 to the leases provides that the service expenses include managing agents fees and disbursements relating to the collection of rents and service charge contributions (Sch 4 para 9). It therefore appears to the Tribunal that these sums are payable in principle. The time engaged on the tasks appears to be reasonable. The hourly rate applied for Mr Abbott is in line with the RICS management agreement between the landlord and agent.
23. It therefore appears to the Tribunal that this sum is payable and reasonable. However, as this matter comes before the Tribunal as a transfer at the direction of the county court "to determine the fairness of the service charges claimed" and this charge actually comprises costs incurred in preparing and issuing those proceedings the final decision as to the defendant's liability to pay those costs is a matter for the county court.

### **Estimated reserve**

24. The sum of £2,000 is claimed. Mr Abbot explains that the reserve is intended to meet the costs of longer term maintenance. When he took over management in the Summer of 2010 he identified that works were needed to the drains which suffered recurrent blockage and to the parapet wall which showed dilapidation with plant growth visually apparent. He also made provision for the likely need for repairs to the roof which is pitched tile running into a valley gutter and which he believes will now be requiring maintenance.
25. Paragraph 15 of schedule 4 to the leases provide that the service expenses include the reserve fund as estimated by the landlord and/or managing agent. Clause 2 provides that the rechargeable service rent shall be a fair proportion of the service expenses as determined by the landlord. It follows that a fair proportion of a reasonable reserve fund is payable by the defendant.

26. The landlord states that there was no reserve fund prior to Mr Abbott's appointment. The only charge for an estimated reserve is that made in the 2011 budget. There is clearly some error in relation to the sum charged. £1,500 is demanded in the February 2011 letter before action from the agents. The particulars of claim plead the charge as £2,000. The charge appears on the 2011 budget account sent to the defendant by Prime Lettings on 12<sup>th</sup> October 2010. That account is before the Tribunal. The sum charged toward the reserve is actually £400 for the building including £100 for each of the defendant's flats. It follows that the reasonable service charge payable by the defendant as his proportion of the reserve fund is not £2,000, but £200.

### **Share of electricity**

27. The sum of £6,394.42 is pleaded as due and owing. This is said to cover the period from 8<sup>th</sup> June 2007 when the claimant acquired the freehold interest in No. 35 to April/May 2011 when the county court proceedings were issued. There is no dispute that the defendant is liable to meet a due proportion of the actual costs of the electricity supplied. The issues are whether the sums charged accurately reflect usage and the proper proportion to be applied between the several users of that supply. In particular the defendant questions why electricity is charged by the supplier at a commercial rate.

28. The claimant states that the supply is charged at a commercial rate which is higher than a standard residential rate because No.35 has one metered electricity supply for the block and the total usage exceeds the residential limit so that a commercial rate is charged. Mr Abbott has attempted to obtain a residential rating and/or lower rate and has been unable to do so but will nonetheless use his best endeavours to do so in the future if it is possible. The tribunal raised the issue of having the meters checked to ensure accuracy during the hearing and the parties agreed that this would be an appropriate step to take. Mr Abbot states that the recharge is a true and accurate reflection of the actual metered usage billed to No.35 by the supplier. On the information and evidence before it the Tribunal is satisfied that the rate is that which is practically available and that the recharge is a true and accurate reflection of the actual metered usage billed to No.35 by the supplier.

29. The proportion applied between the claimant and defendant is 1/3 : 2/3. The claimant argues that this reasonably reflects the respective electricity usage between the claimant's and the defendant's respective demise and use of the common parts in No.35 including access and egress to the upper floors where flats 1 and 2 are situated. The defendant proposes that a 50:50 division is the reasonable and proper proportion, and supports this proposition with the argument that ground floor office unit is akin to a residential unit. Clause 2 of the leases provides that the rechargeable service rent shall be a fair proportion of the service expenses as determined by the landlord. The Tribunal is of the view that any such determination must be proper and reasonable based on the respective interests and likely usage of the claimant and landlord. On the information and evidence before the Tribunal whilst there is some merit in the defendant's argument for a 50:50 division, the claimant's reasoning for the 1/3

: 2/3 division applied is cogent and reasonable and so his determination is a proper and reasonable division of actual electricity costs.

30. Accordingly, the Tribunal determines that the electricity charge of £6,394.42 is reasonable and payable.

### **Share of water charges**

31. The sum of £1,138.70 is pleaded as due and unpaid. There is no dispute that the defendant is liable to meet a due proportion of the actual costs of the water supplied. The issues are whether the sums charged accurately reflect usage and the proper proportion to be applied between the several users of that supply.
32. As noted on inspection the electricity supply is common to the entire building and is metered by one 'smart meter' which is billed to the landlord. The water supply runs from the adjacent property at 37 King Street which appears to have a similar footprint and layout with commercial premises to the ground floor and one residential flat on each of the two floors above. Nos 35 & 37 King Street share the supply and the costs of the same. Mr Abbott liaises with Messrs George London who occupy and manage No. 37. He believes that, prior to Spring 2011, the water bills were a fixed cost based on rateable value. During that time Messrs George London invoiced the claimant for 50% of the water charges. Mr Abbott states that he has had sight of and checked quite a number of the water bills sent to No.37 and is satisfied that the invoices they present are true and accurate. At the present time an external meter outside of the buildings meters usage for both Nos.35 & 37. Since Spring 2011 water usage in No.37 has been metered by a 'smart meter' located in No. 37. Messrs George London who deduct their own metered usage from the metered usage for both Nos. 35 & 37 and invoice the difference to the claimant. Again, Mr Abbott states that he has had sight of and checked quite a number of the metered bills sent to No.37 against the overall metered usage and is satisfied that the invoices they present are true and accurate. In the circumstances the Tribunal is satisfied that the water usage charged to No.35 by Messrs George London is a true and accurate reflection of the actual usage charged by the supplier.
33. As for proportion the agreement has always been a 50:50 split between Nos 35 & 37. On the information before the Tribunal this appears to be a reasonable and proper division of liability. Further, the proportion applied within No.35 has always been a 50:50 split between the claimant and the defendant. On the information before the Tribunal this too appears to be a reasonable and proper division of liability.
34. Accordingly, the Tribunal determines that the water charge of £1,138.70 made to the defendant is reasonable and payable.

### **The costs of the Tribunal proceedings**

35. As this matter was a transfer at the direction of the county court there is no application fee due but a hearing fee of £150 has been paid by the claimant. It appears to the Tribunal that this cost is payable under the lease in principle and is reasonable in sum. However, as this matter comes before the Tribunal as a transfer from the county court this Tribunal does not consider whether to make an order pursuant to section 20C of the Landlord & Tenant Act which would preclude the landlord from recharging these costs as service or administration charges as these costs fall to be considered by the county court when considering the issue of the costs incurred in the county court proceedings and the county court itself has jurisdiction to make an order pursuant to section 20C of the 1985 Act in respect of the costs referable to this Tribunal if it considers it just and equitable to do so. Accordingly, this Tribunal has not considered whether to exercise its own jurisdiction to make such an order.

**Stephen Reeder**  
**Lawyer Chair**

**19<sup>th</sup> June 2012**

**Caution**

***The Tribunal inspected the building and the gardens/grounds solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the building or gardens/grounds are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the same.***

