1040Y

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**CHI/24/UG/LSC/2014/0025**
Property	:	**5 Beaulieu Court, Beaulieu Gardens, Blackwater, Camberley, Surrey, GU17 OLP**
Applicant	:	**Farouk Aboaba**
Representatives	:	**Mr L Dosunmu and Mrs R Hawksley**
Respondent	:	**Beaulieu Gardens Management (Blackwater) Limited**
Representative	:	**Mr Pederson of Pederson & Co**
Type of Application	:	**Section 27A Service Charges**
Tribunal Members	:	**Judge Paul Letman** **Mr Neil Maloney FRICS**
Date and venue of Hearing	:	**22 September 2014 at Casa Hotel, Yateley, Handford Lane, Yateley, Camberley West, GU46 6BT**
Date of Decision	:	**16 October 2014**

DECISION
AND REASONS

Introduction

1. The Applicant is the lessee under a lease dated 09 February 1977 ('the Lease') of all those premises known as and situate at 5 Beaulieu Court, Beaulieu Gardens, Blackwater, Camberley, Surrey GU17 0LP ('Flat 5'). The Respondent is the management company under the Lease that has covenanted to perform the obligations in the Third Schedule thereto for the provision of services.

2. By application dated 10 March 2014 the Applicant sought a determination of his liability to pay and the reasonableness of service charges for the years 2010, 2011, 2012, 2013, and 2014.

3. Notably, shortly prior thereto by proceedings in the County Court commenced on or about 03 February 2014 the Respondent made a claim for alleged arrears of service charge for the period 31 March 2011 to 31 March 2014. On 19 February 2014 judgment in default was obtained in that claim by the Respondent in the sum of £3,076.25.

4. Upon the Case Management Hearing in this application on 15 May 2014 the tribunal noted that unless the default judgment was set aide at a forthcoming hearing, this application would exclude consideration of the service charges that were the subject of the default judgment.

5. The tribunal also at the Case Management Hearing informed the parties of the limits of its jurisdiction (by reference to the decisions in *Canary Riverside plc v Schilling LRX/65/2005* and *Continental Property Ventures Inc v White LRX/60/2005)*. Thus, having noted, by way of example, that it was out of its jurisdiction to deal with complaints under the Companies Act as referred to in the application, the tribunal determined that it did not have jurisdiction to deal with and duly struck out the complaint made by the Applicant (and repeated at paragraph 10 in the Application for each year in question) 'That Mr Kevin Howard should be prevented from holding a directorship of the management company until it is rotated round before his turn again as he is running the management company like his personal company.'

6. Further, at the said hearing the tribunal made directions for the filing and service of new written statements of case together with supporting documents etc in preparation for a substantive hearing on the target date of 22 September 2014.

7. Subsequently the default judgment was set aside by consent and by order dated 05 August 2014 made by Deputy District Judge Haig-Haddow the County Court claim (number A1QZ2137) was transferred to the tribunal. By

notice of directions dated 04 September 2014 Judge Tildesley OBE noted that the matters raised in the Claim were the same as in the Application with the possible exception of the claim for legal charges and that the tribunal has no jurisdiction to deal with claims for statutory interest, and directed that the Claim (number A1QZ2137) should be heard at the same time as this Application. The tribunal also made supplementary directions, in case the Respondent wished to pursue its claim for legal charges.

8. Pursuant to the foregoing on or about 01 August 2014 the Applicant submitted to the tribunal an revised form of application (the revised Application) of that date, together with a witness statement prepared by Larry Dosunmu and dated 31 July 2014 and other submissions and document in support. By letter dated 03 September 2014 from Pedersen & Co the Respondent responded to the latter submission, setting out in an appended document the Respondent's answer to each of the questions posed and points raised in the application, as well as providing copy re-issued demands and other documents.

9. The application came on for hearing before this tribunal on 22 September 2014. At the hearing the Applicant was represented both by Mrs Rebecca Hawksley of R Hawskley & Co solicitors and by a relative Mr Larry Dosunmu, each of whom made further oral submissions to the tribunal. The Respondent was represented by Mr Pedersen of Pedersen & Co, managing agents for the Respondent, who was also heard by the tribunal.

The Property

10. The tribunal inspected the premises, being the ground floor unit of a purpose built pair of maisonettes in a back to back arrangement with the neighbouring building. There is a similar structure to its left flank and these along with parking and garages to the rear form the Estate. The buildings are constructed of cavity walls (probably insulated) with an external brick façade; pitched timber roof with tiling; and windows and doors made from a mixture of PVC, wood and glass.

The Lease

11. By clause 5(a) of the Lease the tenant covenants with the Company (the Respondent) and with the lessor, so far as is presently material, that the tenant will on 31st day of December in every year pay to the Company a sum equal to one eighth part of the estimated total costs together with the amount of VAT at the date thereof prevailing payable by the Company in respect of the

performance by the Company of the obligations set forth in the Third Schedule.

12. Under clause 5(b) of the Lease the estimated total costs payable by the Company in each year as referred to under clause 5(a) are to be ascertained by the Accountant or Auditor appointed by the Company who shall so soon as may be after 31st December in each year cause to be sent to the tenant a Certificate of the same. Although not expressly provided, the necessary implication appears to be that on receipt of the Certificate the tenant will pay any balance due or be credited or even repaid any prior overpayment.

13. Further, by clause 6 of the Lease the Company covenants with the lessor and the tenant and each of them to perform the obligations set forth in the Third Schedule provided that if the Company shall at any time default in the performance of any of its obligations for one month after the lessor has served upon it notice in writing requiring it to perform the same the lessor may enter and perform the same and any moneys expended by the lessor in and in connection with so doing shall be paid by the Company.

14. Under the Third Schedule (the obligations of the Company) the services to be provided by the Company are set out extensively, including at paragraph 4 the obligation to keep the Blocks insured against the normal risks, and also to produce to the tenant or his agent on request the policy of insurance and the receipt for the current premium.

The Applicable Statutory Framework

15. Under section 18 of the Landlord and Tenant Act 1985 (as amended) service charges are defined as amounts payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs. The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord (lessor), or a superior landlord, in connection with the matters for which the service charge is payable.

16. By section 19 entitled Limitation of service charges: reasonableness, it is provided at sub-section (1) that 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.

17. Further, section 19(2) of the 1985 Act provides that 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.

18. Under section 27A of the 1985 Act the tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance, or management of any specified description, a service charge would be payable for those costs, and if so, the amount which would be payable.

19. In determining whether costs were reasonably incurred the tribunal should consider whether the landlord's actions taken in incurring the relevant costs, and the amount of those costs, were both reasonable. The requirement that the costs be reasonably incurred does not mean that the relevant expenditure must be cheapest available, although this does not give the landlord a licence to charge a sum which is out of line with the market norm. There is no presumption for or against a finding of reasonableness rather a tribunal must reach a conclusion on the whole of the evidence.

20. Further, and of particular relevance to this Application, section 20B of the 1985 Act headed 'Limitation of service charges: time limit on making demands' provides under sub-section (1) that if any of the relevant costs taken in to 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. Sub-section (2) provides that sub-section (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.

21. Section 21B of the 1985 Act headed 'Notice to accompany demands for service charges' provides, amongst other things, that a demand for payment of a service charge must be accompanied by a summary of the rights of obligations of tenants of dwellings in relation to service charges, and that a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand. The relevant summary of rights is that prescribed under the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007, which came into force as from 01 October 2007.

The Parties' Respective Cases

1) Section 20B & the Demands

22. The Applicant takes 2 overarching points of principle challenging the recovery of the service charges claimed by the Respondent in the relevant years 2010 through to 2015. Firstly, the Applicant relies upon sections 20B and 21B, and on the basis, initially alleged on his behalf, that the first demand for service charges that was accompanied with the required summary of rights was dated 18 September 2013, contended that the lessor was barred from claiming (pursuant to its re-issued and compliant demands) service charges incurred prior to 18 March 2012.

23. Secondly, the Applicant relies upon the terms of the Lease and the manner in which service charges have been levied from the lessees. There is no dispute that at least up until the appointment of Pedersen & Company (hereafter Pedersen) service charges were collected by the Respondent by monthly installments. Since the appointment of Pedersen the charges have been levied by demands for specified sums raised in advance for the 6 months commencing 01 April and 01 October each year. Neither regime complies with the provisions of clause 5 of the Lease, which is framed in terms of an estimate in advance, payment on 31 December and a certificate thereafter.

24. In particular and in so far as necessary the Applicant submits that there has been no certificate for the purposes of any liability under clause 5(b) of the Lease. Thus the Applicant argues that the single set of unaudited accounts produced for the year end 31 March 2013 cannot constitute a certificate for the purposes of that clause, given that they do not even purport to be a certificate and the fact that they were prepared by Pedersen who are neither accountants nor auditors. In summary, therefore, for each of these reasons the Applicant contends that no service charges have yet been properly demanded by or are due and owing to the Respondent.

25. In response to the first point above Mr Pedersen referred to the fact that his firm began work as managing agents about September 2012, and produced a series of demands, beginning with a demand dated 28 September 2012, all of which included the requisite summary of rights and obligations. On the basis that this was the earliest compliant demand and that there were no documents that might amount to a section 21B(2) notification in respect of earlier charges, Mr Pedersen conceded that the Respondent was not entitled to service charge costs incurred prior to 28 March 2011 but maintained its claims in respect of costs incurred on or after that date.

26. As regards the further criticism that none of the demands raised complied with the provisions of clauses 5(a) or (b) of the Lease, Mr Pedersen acknowledged that the monthly or latterly half-yearly demands were not strictly compliant but pointed out that they were based on estimated totals and contended that they were not invalidated by the differences in date and service charge year. The variance from the calendar year was he explained effectively dictated by the preparation of the Respondent's accounts on the basis of the normal financial year ending 31 March.

27. As to certification Mr Pedersen acknowledged that his firm were neither accountants nor auditors. However, given that the interim demands if valid exceeded expenditure (for example interim demands in y/e March 2013 totalled £5,360 (£670 per lessee) whereas expenditure was apparently just £2,194) the fact of the matter is that the Respondent does not need to rely upon any certificate for the recovery of service charges in any year.

2) Disputed Service Charge Costs

28. Beyond the issues argued above and without prejudice thereto, the Applicant raised a number of specific challenges to the service charges claimed by the Respondent and detailed in the schedule (produced in the course of this Application by Pedersen) headed 'BGM Income Expenditure 2009 to 2012' (at page 33 of the Applicant's case) and in the accounts for the year end 31 March 2013. In the light of the Respondent's concession above, together with the fact 2009 is not within the revised Application, the Applicant limited his challenges to specified items in 2011, 2012 and 2013.

29. Thus as regards the garden costs in 2011 in the sum of £470, Mr Dosunmu on behalf of the Applicant contended that the cost was unsubstantiated and too much. He maintained that a reasonable charge would be no more than £380 based on what he suggested had been the costs some years earlier. Amongst the 2012 costs he challenged the 'Companies House' costs of £950 on the grounds that it was not clear for what these were incurred. As to the 2013 expenses he objected to the 'Miscellaneous' costs of £50, again on the basis that there was no information showing what this covered.

30. In reply Mr Pedersen confirmed the gardening costs were incurred, and asserted that they are obviously inexpensive and reasonable. In support he referred to and relied upon the current estimate obtained by the Respondent for a basic gardening service in the sum of £1,080 per annum. He explained that the Companies House costs comprised a £300 late filing penalty and £650 for reinstating the Respondent to the register of companies. The latter costs being, he acknowledged, unusually high because of the need to follow a special procedure because of a previous default by the Respondent.

31. Mr Pedersen also provided a breakdown of the £50 miscellaneous charges; £13 was he said the charge for filing the Respondent's annual return, £21.60 was the cost of a necessary company enquiry, £1 was a dormant account charge, whilst £14.20 was incurred in obtaining a copy of the accounts as a consequence of the Respondent being struck off. In the light of these details Mr Dosunmu in response accepted and withdrew his challenge to the first 3 items, but maintained his objection to the latter charge.

3) The Cross Claims

32. In addition to the matters above the Applicant raises cross claims for damp proofing works, for damage arising from water flooding from the flat above and in respect of the costs of separate insurance taken out by him in respect of the premises.

a) Damp proofing works

33. As regards the damp proofing works, the works in question are principally the installation in 2011 of an additional airbrick to the rear external wall of the Applicant's premises. Mr Dosunmu described how in 2006 he raised with the Respondent the problem of damp, and at its suggestion instructed a surveyor to investigate.

34. Mr Dosunmu informed the tribunal that the surveyor confirmed that there was rising damp and recommended the installation of an added air brick. When asked by the tribunal whether there was a report to support these allegations, Mr Dosunmu said that he did not have a copy of the report. No evidence was led as to the costs of the damp proofing works carried out on Mr Dosunmu's instruction in 2011.

35. On behalf of the Respondent, Mr Pedersen rejected the damp proofing claim. He suggested that the source of the damp may have been condensation resulting from the lifestyle of occupiers at the time. In any event he contended that in the absence of a surveyor's report there was no proper evidence of the alleged problem or that its cause, assuming it had existed, was rising damp as claimed by the Applicant. Further, he relied upon the absence of any evidence of the costs of the work done.

b) Flooding Claims

36. In relation to water flooding from the first floor flat 6 into Flat 5, Mr Dosunmu pointed out to the tribunal on the inspection of the subject premises the areas where this had occurred, both in the living room and adjacent bathroom.

37. As set out in his revised Application and confirmed before the tribunal, it is the Applicant's case that on 3 separate occasions water leaked from the bathroom of flat 6 and caused extensive damage to Flat 5. The first flood was in November 2010, the second in February 2011 and the third about 31 March 2011 (the letter dated 31 March 2011 from Mr Dosunmu to the owner of Flat 6 (at page 42 of the Applicant's bundle) refers).

38. The Applicant contends that the Respondent 'failed to carry out repairs in my flat and thereby breaching the terms and conditions of my Lease.' Further, he alleges that each of the floods and the consequent damage should have been the subject of an insurance claim by the Respondent and that accordingly he should be indemnified and reimbursed the repair costs which he incurred.

39. The revised Application states that the costs of the necessary repair works was in excess of £3,000 and that the Applicant suffered further loss in that the tenant moved out, and it took some 4 months to complete the remedial works and find another tenant.

40. In support of his damages claim the Applicant relies upon the document at page 44 of his bundle. In answer to the tribunal's queries about this paper, Mr Dosunmu stated that this was written by the contractor who did the works, and that he recorded on the one sheet the work he did after each of the first and second floods and then the work 'to do' after the last flood. The document indicates work done at a cost of about £2,000 and work to do at a cost of some £500 only.

41. In opposition to the claim Mr Pedersen makes a number of points. Firstly, he denies that there was any breach of covenant on the part of the Respondent, given that the origin of the leaks was the bathroom of the first floor flat rather than any common part for which the Respondent might have been liable. Indeed it was pointed out that Mr Dosunmu's own letter of 31 March 2011 is consistent with this proposition, in that it attributes responsibility to the owner and occupier of the first floor flat.

42. As regards the insurance position, Mr Pedersen was prepared to accept that the first leak may have been a legitimate insurance claim on the landlord's insurance, but the second and certainly the third leak he thought would have been contested by the landlord's insurer, unwilling to pay for repeat events. In any event though the Applicant would have had to make a claim or request a claim to be made at the time of the floods, and it is the Respondent's case that the Applicant failed to do so.

43. Further, Mr Pedersen was highly critical of the document (at page 44) produced for the Applicant in support of the costs of works. As he observed, it is not a bill nor invoice nor a receipt of any kind.

c) *Extra Insurance Costs*

44. The Applicant claims under this head the costs he incurred in taking out separate insurance for Flat 5 in the years 2012/13 and 2013/14 in the sum of £477.37 per annum. His case is that he requested confirmation from Mr Howard, a director of the Respondent, that the insurance was in place, and that he refused to assist. The allegation is that this left the Applicant with no choice but to obtain insurance of his own in order to comply with the terms and conditions of his mortgage.

45. At the hearing Mr Dosunmu expanded upon this latter point, explaining that when he sold Flat 5 to his brother in December 2009 the mortgagee required confirmation of insurance, and that when his brother decided subsequently to let the premises to third parties, he advised his brother that 'to be on the safe side' he should take out his own flat insurance.

46. For the purposes of liability the Applicant relies upon paragraph 4 of the Third Schedule (see above), and maintains that the Respondent was thereby in breach of its obligation '..to produce to the Tenant or his Agent on request the Policy of insurance and the receipt for the current premium'.

47. As to quantum, Mr Dosunmu relies upon the policy renewal paperwork for the period commencing October 2013 at pages 39 to 41 of his bundle. This indicates a premium of £477.37. However, despite questions being raised at the hearing, the scope of the cover remains unclear, given that the buildings sum insured of £504,750 is obviously more than the value of just Flat 5, and the policy appears to be specifically for the purposes of 'Private rental 6 months or more.'

48. Mr Pedersen denied liability on the part of the Respondent. Thus he denied that the Respondent had failed to insure or to provide evidence of the same. He produced details of the insurances to confirm that at all material times there had been a policy in place. Indeed in the light of this information, it appeared to be uncontroversial now that such insurances had been obtained. As to any refusal to provide information, this was according to the Respondent's statement of case, limited only to insurance details 'declined on the basis of Data Protection.'

49. Mr Pedersen also denied that the Applicant had in any event been justified in obtaining alternative insurance. He referred to the fact that Mr Dosunmu must have known that there was buildings insurance in 2008 when he had been involved in the management of the block, and when he assigned his interest in 2009 to the Applicant. He was dismissive of the argument that obtaining the insurance 'to be on the safe side' was sufficient justification.

50. Mr Pedersen was also critical of the renewal documentation. He doubted that the policy obtained by the Applicant was equivalent to the landlord's buildings insurance in relation to Flat 5, and suggested that it was for the whole of the block rather than simply the Applicant's premises and that it extended to other purposes including the commercial letting of the Applicant's flat.

51. Further. Mr Pedersen relied upon clause 6 of the Lease, arguing that if the Respondent had been in default, the Applicant had his own remedy under the Lease, in that he could insist on the freeholder stepping in and meeting the Respondent's obligations to produce a copy of the insurance policy or even to place the insurance if none had been obtained. Thus he contended that if there was any potential claim, the Applicant had failed to act reasonably in mitigation of his losses and should be deprived accordingly from recovering the same.

52. It is convenient also to record here that although the Applicant's statement of case seeks to challenge the actual level of insurance charges levied by the Respondent, this was not pursued at the hearing by Mr Dosunmu by reference to the schedule of charges (at page 33 of his bundle of supporting documents) or otherwise. Thus there was no challenge to the insurance costs detailed by Mr Pedersen at the hearing as follows (a) July 2011, £1,600.33 as paid (b) 2012/13 £1,639.71, and (c) 2013/14 £1,747.67. Although the tribunal was also informed of the 2014/15 renewal premium, in the absence of any further details of any other costs for these years it was accepted by both sides that these should not be considered as part of this determination.

The Determination

1) Section 20B & the Demands

53. As regards section 20B, in the light of the copy demands produced by the Respondent at the hearing, it was accepted on behalf of the Applicant that section 21B compliant demands were made from 28 September 2012 and in so far as necessary this tribunal so finds. On this basis the Applicant also appeared to accepted at the hearing that rather than the Respondent being limited, as originally contended, to claiming service charges incurred after 18 March 2012, the cut-off date was instead 28 March 2011.

54. It is unnecessary for the tribunal to decide the point, however, given the concession made by the Respondent at the hearing that in the circumstances it is limited to claiming service charges incurred on or after 28 March 2011, so as, for example, to exclude the Final soffits payment invoiced prior to that date and paid in December 2010 . Indeed the hearing was conducted on the

basis of this concession. The tribunal accordingly limits its determination to service charge costs incurred on or after 28 March 2011.

55. As regards the further point that none of the demands raised have complied with provisions of clauses 5(a) or (b) of the Lease, it is clear that this criticism is well founded. None of the demands are in accordance with the Lease procedures. A monthly demand is simply not a single demand in advance for payment on 31 December as required. Equally, demands for service charges in advance for the 6 months beginning 01 April and then 31 October are again not such a demand, and depending upon how they are analysed always either claim 2 or 4 months worth of service charges earlier than can be claimed in accordance with clause 5(a).

56. Further, whilst the monthly demands may have been agreed by other lessees there is nothing to suggest that this applies to the Applicant or that he is otherwise estopped from objecting to this form of demand. Similarly, whilst the more recent half-yearly demands may be explained as a result of the Respondent's accounting year, there is no apparent reason why the Applicant should be bound to accept this departure from the lease terms. The question remains, however, whether the failure to comply with the Lease means the demands are invalid and ineffective.

57. In the tribunal's judgement the departure from the Lease terms is such that the various demands cannot be regarded as valid demands under the Lease, so that presently no sums are as yet due. However, that is not to say the costs that are admitted by the Applicant and the sums determined to be reasonable below cannot be recovered by the Respondent.

58. Just as decided in *Leonora Investment Co Ltd v Mott Mechanical Ltd* [2008] EWHC 136 (QB) to which the Applicant has referred the tribunal, although the time for any interim demand has passed, given the terms of clause 5(b) here there is in the tribunal's view no inhibition under the clause itself upon the Respondent even now sending a Certificate for each of the relevant years (2011 and following) to the Applicant and demanding the ascertained costs.

2) Disputed Service Charge Costs

59. Turning then to the Applicant's specific challenges to the service charges claimed by the Respondent for 2011, 2012 and 2013.

60. As regards the gardening costs for 2011 in the sum of £470, the tribunal accepts the evidence of Mr Pedersen that these costs were incurred. Albeit the fact that they were regularly incurred requires them to be apportioned, as acknowledged by both parties at the hearing, to reflect the 28 March 2011 'cut-off'. Further, having seen the extent of the premises including lawn, trees,

beds and bushes, the tribunal are satisfied that the costs were reasonable and reasonably incurred. Comparison with the current estimate referred to by the Respondent only confirms this conclusion.

61. As to the challenged 'Companies House' costs of £950 in 2012, the evidence of Mr Pedersen revealed that this entire cost was attributable to the Respondent being struck off the register as a result necessarily of its own faults and failings. In the tribunal's view this is not, therefore, a cost that can properly be visited on the Applicant as a lessee, and the tribunal determines that it was not reasonably incurred and is not recoverable from the Applicant.

62. For the same reasons the tribunal determines that £14.20 of the £50 Miscellaneous costs in 2012/13 was unreasonably incurred; thus only the balance under this head of £35.80 is recoverable (subject to proper demand) as conceded by the Applicant at the hearing.

3) The Cross Claims

a) Damp proofing works

63. As regards the damp proofing works claim, in the absence of a surveyor's report covering the alleged damp, its causes and effects and the scope of any necessary remedial works, or even for that matter any record at all of the alleged dampness, the tribunal is unable now to find that there was rising damp in the premises as alleged.

64. Even if there was dampness in the premises there is nothing now to show that it was not the result of condensation due to lack of ventilation or the lifestyle of the occupants for which the Respondent would not be liable. The fact that the problem allegedly arose in 2006 and yet no works were done until 2011, also suggests that the problem was not persistent, as one would have expected if the cause was rising damp.

65. Further, even if the tribunal were wrong in these conclusions, there is no evidence of the costs incurred on which any award of damages could be based. For these reasons and each of them, the Applicant's purported set off in respect of damp proofing work is rejected.

b) Flooding Claims

66. In relation to water flooding from the first floor flat 6 into Flat 5, the tribunal is quite prepared to accept the evidence for the Applicant that on 3 separate occasions between November 2011 and March 2012 water leaked from the bathroom of flat 6 and caused extensive damage to Flat 5 below. However, such a leak originating as claimed from within the demise of another tenant is

not the result of any breach of the landlord's repairing covenants and the resulting flood and consequential damage cannot be the liability of the landlord. Liability may lie with the lessee or occupant of Flat 6, as Mr Dosunmu obviously appreciated when writing his letter to Mrs Hounsome on 31 March 2012, but that is not a matter for this tribunal to determine.

67. As regards the insurance position, the tribunal also accepts, as did Mr Pedersen, that the first leak may have been a legitimate insurance claim on the landlord's insurance. The tribunal also accepts, however, that the repeat second and third leaks may have been rejected by the landlord's insurer. As to whether the Applicant made a claim or requested that a claim be made at the time, given the Respondent's denial that any such claim or request was made and, more importantly, in the absence of any documentary or other evidence from the Applicant that shows the same was made, the tribunal finds for present purposes that no relevant claim or request was in fact made.

68. Still further, if the tribunal were wrong for any reason in its conclusions above, it is far from clear what costs were in fact incurred by the Applicant in respect of any remedial works. The document at page 44 is wholly unsatisfactory as evidence of the scope of the required remedial works or the Applicant's loss and damage. The tribunal accepts the criticisms made of this document by the Respondent, that it is neither an invoice nor receipt. Also, the tribunal reject, as simply too improbable, the allegation that this single piece of paper was compiled contemporaneously with each flood as described by Mr Dosunmu. Rather it appears to the tribunal to be a document prepared at some subsequent stage, although when and by whom is not evident. Further, there is simply not enough information about the damage and works done upon which the tribunal could itself properly make an alternative estimate of costs.

69. For these reasons and each of them the Applicant's purported set off in respect of flooding from flat 6 is rejected.

c) Extra Insurance Costs

70. As noted above the Applicant claims under this head the costs he incurred in taking out separate insurance for Flat 5 in the years 2012/13 and 2013/14 in the sum of £477.37 per annum. His case is that he requested confirmation from Mr Howard, a director of the Respondent, that the insurance was in place and that he refused to assist, leaving the Applicant with no choice but to obtain insurance of his own in order to comply with the terms and conditions of his mortgage.

71. The Respondent's statement of case appears to accept that a request for insurance details was made and refused on grounds of data protection. It is by

no means clear, therefore, that the request made was limited to the obligation under paragraph 4 of the Third Schedule, or that if it was the request was correctly understood by the Respondent, given that it is unlikely it would not have complied with its contractual obligations if that had been the limit of the request. Given the confusion which the tribunal finds to have arisen, therefore, between the parties at the time, the tribunal does not find that the Respondent was in breach of its obligations under paragraph 4 of the Third Schedule.

72. Beyond the allegation of breach determined above, it seems to the tribunal that the key factual issue would be one of causation, and whether if as the Applicant asserts the Respondent refused to produce the policy this led in fact to the Applicant securing his own insurance. On the evidence the tribunal are not satisfied that this was the case. The evidence clearly established that Mr Dosunmu knew that buildings insurance was in place in 2008 and in 2009 on the assignment of the Lease to his brother. Further, with the arrival of professional managing agents about September 2012, he would have had no reason realistically to doubt that such insurance was in place.

73. Further, the actual reason for obtaining the extra insurance appeared from Mr Dosunmu's own evidence to be the need for adequate cover 'to be on the safe side' for the purposes of the commercial sub-letting of Flat 5. Indeed so much is indicated by the terms of the renewal documentation relied upon by the Applicant. If, therefore, the Respondent was in breach in failing to produce a copy of the landlord's insurance policy, on balance the tribunal finds that this was not causative of the extra costs now claimed by the Applicant.

74. Moreover, the tribunal are in any event persuaded by and accept the Respondent's argument that the Applicant had at his disposal the means to remedy any default on the part of the Respondent in this regard, if default there was, by notice to the freeholder under clause 6 of the Lease. It is to be assumed that had such a notice been made, the freeholder would have performed its obligations, so enabling the Applicant to pursue the proposed claim to avoid any loss.

75. The apparent failure by the Applicant to avail himself of this simple remedy was in the tribunal's view a failure to act reasonably in mitigation of the claimed losses. Thus, if contrary to the foregoing the tribunal had found in favour of the Applicant as regards breach and causation, and were to accept the claimed costs (despite the queries over the scope of the added insurance) this failure to mitigate alone would defeat the extra insurance claim.

The Decision

76. For the reasons set out above the tribunal determine that subject to proper demand being made in accordance with the Lease and compliance with statutory requirements the reasonable service charges payable from the Applicant to the Respondent in the relevant years would be one eighth part of the following:

2011

Insurance	£1,600.33
Garden	£353 (apportioning the determined sum of £470 as from 28 March 2011)
Companies House	£69

2012

Insurance	£1,639.71
Management Fees	£294 (apportioning the admitted sum of £504)
2012 Annual Return	£40
2013 Annual Return	£40

2013

Insurance	£1,747.67
Management Fees	£840 (at the same rate as admitted above)
Miscellaneous	£35.80

77. Further, for the reasons set out above the tribunal determines that the cross claims by way of set-off raised by the Applicant in respect of damp proofing works, flooding damage and extra insurance costs are unsustainable and rejects each of them.

78. As raised with the parties and agreed by them before the tribunal, no determination is made in respect of the service charges for the years 2014 or 2015 in the absence as yet of particulars of the same or proper demands and the Applicant is at liberty to make such further application as he sees fit in due course in respect of those years.

Costs and Interest

79. As noted above, in the County Court proceedings transferred to this tribunal the Respondent claims by its Particulars of Claim the sum of £480 in legal

charges alleged to be payable under the Lease. It also claims statutory interest upon the sums claimed.

80. For his part by the revised Application the Applicant has applied for a order under section 20C of the 1985 Act. Thus this tribunal may make an order that all of the costs incurred by the Respondent in connection with proceedings before the court, which proceedings are effectively now before this tribunal, as well as its costs before this tribunal, are not to be regarded as relevant costs to be taken into account as part of the service charge payable by the Applicant.

81. Mr Pedersen, however, on behalf of the Respondent confirmed to the tribunal that the Respondent does not pursue its claim for costs of £480 and will not add any other costs incurred in connection with these proceedings to the Applicant's service charges. On this basis the tribunal makes no order under section 20C.

82. As regards the claim for statutory interest, this tribunal has no jurisdiction to make such an award. Further, in the light of the decisions above, it seems unlikely that there could in any event be a liability on the part of the Applicant to pay such interest.

Notification of the Right to Appeal

The parties each have a right of appeal against this decision in accordance with Part 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Tribunal's Rules'). An application for permission to appeal must be made in writing to the Tribunal within 28 days after the latest of the dates that the Tribunal sends to the person making the application (a) these written reasons for the decision (b) notification of amended reasons for, or correction of, the decision following a review; or (c) notification that an application for the decision to be set aside has been unsuccessful, subject that is to any extension of time if granted by the Tribunal.

Dated: 16 October 2014