HM Courts & Tribunals Service

**Property Chamber**
**London Residential Property**
**First-tier Tribunal**

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Ms Michelle Baharier
Flat 37 Gilesmead
79 Camberwell Church Street
London
SE5 7LN

Your ref:
Our ref: LON/00BE/LSC/2017/0092

Date: 17 August 2017

Dear Ms Baharier

**RE: Landlord & Tenant Act 1985 - Section 27A(1)**

**PREMISES: 37 Gilesmead, 79 Camberwell Church Street, Camberwell, London, SE5 7LN**

The Tribunal has made its determination in respect of the above application(s) and a copy of the document recording its decision is enclosed. A copy is being sent to all other parties to the proceedings.

Any application from a party for permission to appeal to the Upper Tribunal (Lands Chamber) must normally be made to the Tribunal within 28 days of the date of this letter. If the Tribunal refuses permission to appeal you have the right to seek permission from the Upper Tribunal (Lands Chamber) itself.

If you are considering appealing, you are advised to read the note attached to this letter.

Yours sincerely

C. Stone

**Ms Caroline Stone**
**Case Officer**

**First-tier Tribunal, Property Chamber**
**Residential Property**

## GUIDANCE ON APPEAL

1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).

2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**

3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.

4) You must apply for the permission **in writing**, and you must:
   - identify the case by giving the address of the property concerned and the Tribunal's reference number;
   - give the name and address of the applicant and any representative;
   - give the name and address of every respondent and any representative
   - identify the decision or the part of the decision that you want to appeal;
   - state the grounds of appeal and state the result that you are seeking;
   - sign and date the application
   - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.

6) On a review the tribunal can
   - correct accidental errors in the decision or in a record of the decision;
   - amend the reasons given for the decision;
   - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
   - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.

8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.

9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

**These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:**

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

*The Upper Tribunal (Lands Chamber) may be contacted at:*

*5th Floor, Rolls Building, 7 Rolls Buildings*
*Fetter Lane, London EC4A 1NL*

*Tel:* *0207 612 9710*
*Goldfax:* *0870 761 7751*

*Email:* *lands@hmcts.gsi.gov.uk*

The Upper Tribunal (Lands Camber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.justice.gov.uk/trbunals/lands.

**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

| | | |
|---|---|---|
| **Case Reference** | : | **LON/00BE/LSC/2017/0092** |
| **Property** | : | **37 Gilesmead, 79 Camberwell Church Street, London SE5 7LN** |
| **Applicant (Landlord)** | : | **London Borough of Southwark** |
| **Representative** | : | **Charlotte Dowding, Enforcement Officer** |
| **Respondent (Tenant)** | : | **Ms Michelle Baharier** |
| **Representative** | : | **In person** |
| **Type of Application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge N Hawkes**<br>**Mr K M Cartwright JP FRICS**<br>**Mr A D Ring** |
| **Date and venue of Hearing** | : | **27th and 28th July 2017 at 10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **16th August 2017** |

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**DECISION**

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## Decisions of the Tribunal

(1) The Tribunal determines that the interim service charge in the sum of £24,486.88 claimed by the landlord in the service charge year 2014/15 is not payable.

(2) Any written representations as to whether or not the Tribunal should make an order under section 20C of the Landlord and Tenant Act 1985 should be served on the other party and filed with the Tribunal within 21 days of the date of this decision.

(3) The Tribunal has no jurisdiction over County Court costs. Accordingly, following the determination of any application pursuant to section 20C of the 1985 Act, or if no such application is received within 21 days of the date of this Decision, this matter will be returned to the County Court at Central London

## The application

1. Following a transfer from the County Court at Central London by order dated 8th February 2017, the tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of an interim service charge in the sum of £24,486.88 claimed by the landlord in the service charge year 2014/15 in respect of the cost of replacing a communal heating system serving the property.

2. The relevant legal provisions are set out in the Appendix to this decision.

## The hearing

3. The tenant, Ms Baharier, appeared in person, supported by Ms Gete Otite of the Southwark Citizens Advice Bureau, and the landlord was represented by Ms Dowding, an Enforcement Officer, at the hearing.

4. The Tribunal heard oral evidence from Ms Carla Blair, a Capital Works Manager in the landlord's Home Ownership Services Department; from Mr John Marenghi, a Senior Mechanical Engineer in the Asset Management Section of the landlord's Housing and Modernisation Department, and from the tenant, Ms Baharier.

5. The tenant made the Tribunal aware that she has a number of disabilities before attending an oral case management hearing which took place on 11th April 2017. At the case management hearing, the Tribunal invited the tenant to suggest any reasonable adjustments

which she would like the Tribunal to make at the final hearing and the issue of reasonable adjustments was against raised by the Tribunal at the start of the final hearing.

6. The tenant finds the words "applicant" and "respondent" confusing and so the words "landlord" and "tenant" were used throughout the hearing and appear in this Decision.

7. At the tenant's request, there was a discussion at the beginning of the hearing in order to clearly establish how everyone present wished to be addressed.

8. The tenant requires regular breaks and so, in addition to a one hour break for lunch, the Tribunal arranged for 20 to 30-minute breaks to take place mid-morning and mid-afternoon. The parties were invited to inform the Tribunal if a break was needed at any other time.

9. The Tribunal had read the hearing bundles, including the witness statements and the documents exhibited to the witness statements, in advance of the hearing. It was therefore not necessary for either party to take the Tribunal through the witness statements and exhibits before the witnesses confirmed that the facts contained in their witness statements were true and were cross-examined. Accordingly, it was possible to complete the hearing within the two day time estimate, whilst also ensuring that regular breaks took place during the course of each day.

## The background

10. The tenant's property is a two bedroom flat in a low-rise block which contains a mixture of flats and maisonettes. The block is thought to have been constructed in the 1960s. A number of photographs were provided in the hearing bundle and the Tribunal did not consider that it necessary or proportionate to carry out an inspection.

11. The tenant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate

## The issues

12. The tenant raised the following issues during the course of the hearing:

    (i) The payability of interim services charges in the sum of £24,486.88 in the service charge year 2014/15 which relate to the cost of replacing a communal heating system serving the

property ("the Work"); the tenant argues that the Work amounts to "improvement" rather than "repair" and that the sum claimed is therefore irrecoverable under the terms of her lease.

(ii) Whether the sum claimed by way of interim service charge should be reduced by reason of the fact that, on the tenant's case, the new boiler system has repeatedly broken down.

(iii) Whether the landlord received third party funding to carry out the Work and, if so, whether there should be a deduction from the interim service charge to reflect this.

(iv) Whether the sum charged by way of interim service charge is reasonable.

(v) Whether the landlord has complied with its obligation to consult leaseholders.

(vi) Whether the landlord delayed the commencement of the Work in order to ensure that it would take place over 5 years after the commencement of the tenant's lease.

13. One of the issues raised at the case management hearing was whether or not an order under section 20C of the 1985 Act should be made. Oral submissions on this issue were not requested by the Tribunal at the conclusion of the hearing. It was appreciated that the parties and, in particular, the tenant would have been likely to have had difficulty in addressing this issue without having first seen the Tribunal's Decision.

14. Any written representations on the issue of whether or not the Tribunal should make an order under section 20C of the Landlord and Tenant Act 1985 should be served on the other party and filed with the Tribunal within 21 days of the date of this decision.

15. Having heard evidence and submissions from the parties, and having considered all of the documents which were relied upon during the hearing, the Tribunal has made determinations on the various issues as follows.

## The Tribunal's Determinations

### Whether the sum claimed is payable pursuant to the terms of the tenant's lease

16. By Clause 2(3)(a) of the lease, the tenant covenanted to pay the service charge contributions which are set out in the Third Schedule to the

lease. During the course of the hearing, the Tribunal considered the Third Schedule to the lease; the definition of "the services" at page 2 of the lease; the landlord's repairing covenants, in particular at Clause 4(5); and Clause 2(8) of the lease.

17. The Tribunal expressed the preliminary view (whilst making it clear that it was open to being persuaded otherwise) that the service charge provisions of the lease allow the landlord to levy a service charge in respect of "repairs" to the district central heating system but not in respect of "improvements" to the district central heating system. Both parties in fact agreed that this was the case.

18. The Tribunal has been informed that, in 2012 prior to undertaking the Work, the landlord made an application to the then Leasehold Valuation Tribunal ("LVT") for a determination as to whether or not the cost of the Work would be payable by the leaseholders at Gilesmead pursuant to the terms of their leases.

19. At a pre-trial hearing, the LVT indicated that the landlord's application had been made prematurely because further information was needed before the Tribunal could make a determination. The landlord therefore sought to adjourn the matter generally until the relevant information was available and, on 22nd June 2012, the landlord wrote to the leaseholders confirming that the application would be adjourned until tenders for the work were received.

20. The landlord subsequently decided to withdraw the application to the LVT and to consult further with leaseholders regarding the possible installation of individual boilers in place of a communal heating system. Ms Blair notes, at paragraph 20 of her witness statement, that the landlord was not obliged to make such an application to the LVT.

21. In oral evidence, John Marenghi provided the Tribunal with a very detailed description of both the original district heating system and of the new system which is currently in place.

22. In summary, Mr Marenghi explained that the original district heating system was a warm air background heating system. There was a centralised boiler house on the ground floor of the bock and the boilers in this boiler house pumped hot water through a distribution network into small warm air units located inside each property.

23. The warm air units contained a coil which operated as a heat exchanger. Behind the coil there was an electric fan which drew cold air in and pumped warm air out. Heat was only provided in the main living area of each property.

24. In the maisonettes, which have an open plan kitchen and living room, the warm air unit was situated in the middle of the living area in between the kitchen and the living room. Regardless of the size of the flat or maisonette, there was only one warm air unit.

25. The tenant's property is a two-bedroom flat and, in her flat, the warm air unit was located solely in the living room. There was no heating unit in the bedrooms or in the bathroom in any of the flats or maisonettes and the system was intended to provide background heating only. The tenant indicated that she used electric heaters to bring the temperature in her property up to the required level.

26. The current system is a central heating system rather than a background heating system and there are no warm air units. Every flat and maisonette now has a network of radiators with a radiator in every room.

27. Under the original system, the production of hot water was centralised. Two large hot water storage vessels were heated indirectly from the main heating boilers and hot water was delivered to each property through a series of secondary pumps.

28. There is now a hot water cylinder known as a thermal store in each flat and maisonette which provides heating and hot water to the individual dwelling.

29. The thermal stores indirectly transfer heat to a property's cold-water supply so that it becomes hot water and a secondary circuit heats the water for the radiators. Thermal stores also have immersion elements which can heat the water in the event that the communal system breaks down. The communal heating system now solely provides a primary heat source.

30. Both of the landlord's witnesses stated in oral evidence that the Work is an "improvement" and Mr Marenghi used the word "upgrade" on several occasions. Mr Marenghi was of the view that it would have been possible to replace the warm air background heating system with a similar system (an option which the landlord has not costed) but that the current system includes radiators on external walls, which combat condensation, and that the landlord was aiming to bring the property up to a modern standard.

31. Whilst the Tribunal has taken into account the statements made in oral evidence by both of the landlord's witnesses to the effect that the Work comprised an "improvement", the Tribunal does not consider that these statements are determinative. Accordingly, the Tribunal has focussed on the detailed description given by Mr Marenghi of both the original

heating system and the replacement heating system and on the legal test.

32. As regards the legal test, the landlord referred the tenant and the Tribunal to one authority in submissions, namely, Ravenseft Properties Limited v Davstone (Holdings) Limited [1980] QB 12. A2 Housing Group v Taylor LRX/36/2006 was included in the hearing bundle but was not referred to during the hearing.

33. The Tribunal found the Ravenseft case helpful but was aware that the definition of "repair" and "improvement" has been considered in a number of authorities. Accordingly, in order to obtain an overview, the Tribunal considered the relevant passages in Woodfall: Landlord and Tenant and in Service Charges and Management 3rd Edition; provided the parties with copies; and adjourned in order to give the parties time in which to consider the relevant passages.

34. At paragraph 13.033 of Woodfall: Landlord and Tenant, it is stated:

*Although it is a question of degree in every case whether works fall within the scope of a covenant to repair, a number of different factors have from time to time been identified as helpful in deciding that question. Often judges have defined repair by contrasting repair with other types of work, such as renewal or improvement. Thus in one classic definition it was said that "repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject-matter under discussion." However, other concepts also border upon repair, such as "improvement", "alteration" and "addition" which are distinguishable from repair in different ways. At least three tests have been discerned, which may be applied separately or concurrently as the circumstances of the individual case may demand:*

*(i) whether the alterations go to the whole or substantially the whole of the structure or only to a subsidiary part;*

*(ii) whether the effect of the alterations is to produce a building of a wholly different character from that which has been let;*

*(iii) what is the cost of the works in relation to the previous value of the building, and what is their effect on the value and lifespan of the building.*

*In addition many other circumstances will have to be taken into account. These include: the nature of the building; the terms of the*

*lease; the state of the building at the date of the lease; the nature and extent of the defect sought to be rectified; the nature, extent and cost of the proposed remedial works; at whose expense the proposed remedial work is to be done; the value of the building and its expected lifespan; the effect of the works on such value and lifespan; current building practice; the likelihood of recurrence if one remedy rather than another is adopted; the comparative cost of alternative remedial works, and their impact on the use and enjoyment of the building by the occupants. The weight to be attached to these circumstances will vary from case to case. In addition, where a design or construction fault has led to part of a building falling into disrepair, and the proposed remedial works extend to other parts of the building, an important consideration will be the likelihood of similar disrepair arising in other parts of the building if remedial work is not undertaken there also, and how soon further disrepair is likely to arise.*

35. Paragraph 13.035 of Woodfall: Landlord and Tenant includes the statement that:

*A covenant to repair does not involve a duty to improve the property by the introduction of something different in kind from that which was demised, however beneficial or even necessary that improvement may be by modern standard.*

36. The Tribunal also considered, in particular the following paragraphs of Tenant Service Charges and Management:

*Repairs v improvements*

*3-007*

*A distinction is frequently made between repairs and improvements. Usually, a tenant will be obliged to contribute towards the cost of repairs under a service charge provision but not always towards the cost of improvements. Consequently, tenants often argue that works are properly to be considered improvements, rather than repairs, so that they might avoid paying for them or landlords will make the same argument to avoid undertaking the works at all.*

*Although the distinction is frequently made between repairs and improvements, the distinction between them is occasionally far from obvious. In Wates v Rowland, Evershed L.J. referred to the distinction between repairs and improvements as follows:*

*"In the course of the argument examples were given showing that what was undoubtedly repair might yet involve some degree of improvement, in the sense of the modern substitute being better than*

*that which had gone before. At the other end of the scale, it was also clear that work done to satisfy modern standards, although it might involve restoration and might be said to be restoration ... yet clearly would be an improvement. Between the two extremes, it seems to me to be largely a matter of degree, which in the ordinary case the county court judge could decide as a matter of fact, applying a common-sense man-of-the-world view."*

*Similarly, in Sutton LBC v Drake, the lease provided that the tenant was liable to pay for repairs effected by the local authority landlord. The local authority carried our works to the exterior render of the property such that the existing crittall-type windows (which were otherwise in good repair) would be damaged. The decision was made to provide new double glazed units. The Lands Tribunal held that these were repairs not improvements.*

*Where the repair is also an improvement*

*3-008*

*Further, it is not only the immediate cost of the proposed works which needs to be considered. In Wandsworth LBC v Griffin, the Lands Tribunal had to consider a situation where the landlord council, which was the owner of an estate consisting of blocks of flats, had replaced flat roofs with pitched roofs and the windows with uPVC double-glazed units. The evidence showed that the works involved would provide the best value if life-cycle costing was used as an analytical tool to evaluate an asset over its operating life. Mr Norman Rose, the Chairman, dealing with this point and finding for the landlord held:*

*"It does not seem to me that a repair ceased to be a repair if it also effects an improvement. In my judgment, the works carried out by the (landlords) did constitute a repair, if they were indeed cheaper than the alternatives, taking into account both initial and future costs."*

37. It is a question of fact and degree whether work amounts to "repair" or "improvement". In the present case, a background heating system and communal hot water system, with background heat provided only from a single source in the living area, has been replaced with a full central heating system with radiators in every room and a thermal store which provides heating and hot water to each individual dwelling, and which contains an immersion element which can potentially heat the water.

38. The Tribunal notes that "repairs" can involve an element of improvement. However, having heard detailed evidence, the Tribunal considers that the system which has been substituted by the landlord for the original communal district heating system is "different in kind" from the system which was originally in place. The Tribunal finds on

the facts of this case the Work amounts to "improvement" rather than "repair". Accordingly, the sum claimed by the landlord in respect of the Work is not payable pursuant to the terms of the tenant's lease.

39. Whilst this finding is determinative of the issue of whether or not the disputed service charge is payable, the Tribunal heard full evidence and argument on the other issues raised by the tenant and so sets out its determinations in respect of those issues below.

**The tenant's case that the new heating system regularly breaks down and that the Work was not carried out to a reasonable standard**

40. The Tribunal expressed the preliminary view that (if the cost of the Work were found to be payable pursuant to the terms of the tenant's lease) this issue should be considered when any final service charge demand based on the actual cost the Work is received. This was the landlord's position.

41. After some discussion the tenant agreed with this proposition, whilst reserving the right to potentially challenge any actual service charge claimed in respect of the Work. Accordingly, the Tribunal makes no finding in respect of the tenant's allegations concerning the standard to which the Work was carried out.

**Whether the landlord has received third party funding**

42. Carla Blair was thoroughly cross-examined on the issue of whether or not the landlord received third party funding to carry out the Work. Ms Blair gave consistent evidence that the landlord did not receive third party funding and the Tribunal accepts this evidence.

43. Accordingly, the Tribunal finds as a fact that the landlord did not receive third party funding to replace the communal heating system serving the property.

**Whether the interim service charge is reasonable in amount**

44. The tenant referred the Tribunal to a letter dated 21st June 2012 from Louise Turff, Service Charge Construction Manager, which included the statement (emphasis added):

"You have quoted the amount of £20,000 per property, but this is a budget estimate only based on the feasibility study, as the leaseholders at Gilesmead have been informed on several occasions. A specification for the proposed system has to be drafted **and then tendered out in order to obtain more precise estimates**. The budget estimate is a

worst-case scenario, and we **anticipate** that the actual costs will be lower."

45. It is clear that, at the time this letter was sent out, the specification had not yet been drafted; no tender process had taken place; and the landlord was not claiming to accurately estimate the cost of the Work. The Tribunal is satisfied that, in sending the tenant the letter dated 21st June 2012, the landlord was not limiting itself to charging no more than £20,000.

46. The tenant also relies upon evidence that cost of installing an individual domestic boiler at the property would very much lower the £24,486.88 interim service charge. She has obtained quotations from three contractors in the sum of £2,994, £3,811.85 and £4,799.

47. Additionally, the tenant seeks to compare the interim service charge with the cost of work which was carried out to the heating system of another block in the Borough, Tadworth House.

48. John Marenghi gave evidence, which the Tribunal accepts, that there were significant differences between the original communal heating system at Tadworth House and the original communal heating system at Gilesmead. For example, in contrast with the original heating system at Gilesmead, the original communal heating at Tadworth House provided heating only and not hot water.

49. The issue which falls for consideration under this heading is whether or not the level of the estimated service charge is reasonable having regard to the nature of the Work. It is the landlord's case that the contract to carry out the Work was put out to tender and, in the absence of any like for like alternative quotations, the Tribunal is satisfied that the interim service charge would have been reasonable, had the cost of the Work been payable pursuant to the terms of the tenant's lease.

## Whether the landlord complied with its obligation to consult leaseholders

50. Carla Blair gave evidence that the landlord consulted only in respect of the option which it intended to pursue and that the landlord has complied with its statutory obligation to consult the leaseholders pursuant to section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003.

51. The tenant was concerned that the leaseholders' observations may not have been taken into account. In response, Ms Blair referred the Tribunal to a statutory notice, dated 3rd March 2014, which contains a summary of the lessees' observations and she gave evidence that the lessee's observations were taken into consideration.

52. The Tribunal is satisfied on the evidence of Ms Blair that, whilst the landlord and the lessees ultimately reached different conclusions, the landlord did take the lessees' observations into account.

53. The tenant was also concerned that the Work may have been "signed off and agreed" before the conclusion of the section 20 consultation process. The Tribunal accepts Ms Blair's evidence that this was not the case.

54. The tenant was of the view that some of the landlord's correspondence could have been better worded. Ms Blair explained that, in addition to serving the statutory notices in compliance with the regulations, the landlord engaged in further correspondence and discussions with leaseholders regarding the proposed work. The tenant's complaints relate to the wording of this additional correspondence. The Tribunal is not satisfied that there is anything in the additional correspondence to which it was referred which would potentially invalidate a statutory consultation process.

55. Accordingly, had the Tribunal found that the sum claimed was payable pursuant to the terms of the tenant's lease, it would have been satisfied that the landlord had complied with its statutory obligation to consult leaseholders.

**Whether the landlord delayed in carrying out the Work**

56. The tenant stated that, if the Work had been carried out in 2010, by virtue of a notice pursuant to section 125 of the Housing Act 1985 she would not have been required to pay the sum claimed. She was concerned that the landlord may therefore have deliberate delayed the commencement date.

57. Ms Blair gave evidence that the landlord does not time the work which it carries out with reference to notices under section 125 of the Housing Act 1985. It was her view that, given the extent of the opposition to the proposed work from leaseholders, it would have been wrong for the landlord to have carried out the Work without first engaging the further discussion and correspondence which took place between 2010 and the commencement of the Work.

58. The Tribunal accepts the evidence of Ms Blair as to the landlord's intentions and finds that the tenant had not made out her case under this heading.

**The next steps**

59. The Tribunal has no jurisdiction over County Court costs. Accordingly, following the determination of any application pursuant to section 20C

of the 1985 Act, or if no such application is received within 21 days of the date of this decision, this matter will be returned to the County Court at Central London.

**Name:** Judge Hawkes **Date:** 16th August 2017

## Rights of appeal

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

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

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

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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

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

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

### Section 18

(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 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.

### Section 19

(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 provisions 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 27A

(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 it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

**Section 20**

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

**Section 20B**

(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.

**Section 20C**

(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 the Upper 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) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.