FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LSC/2019/0397**
Property	:	**Flat 1, 21 Inglewood Road, London NW6 1QT**
Applicant	:	**Islay Robinson and Emily Hobbs**
Representative	:	**Islay Robinson**
Respondent	:	**Norstown Properties Limited**
Representative	:	**Ms Krystin Feliciano**
Type of application	:	**S27A, service charges**
Tribunal members	:	**Judge Hargreaves** **John Barlow JP FRICS**
Date and venue of hearing	:	**24th February 2020, Alfred Place**
Date of decision	:	**26th February 2020**

DECISION

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Decisions of the Tribunal

1. Emily Hobbs is joined as an Applicant.

2. A reasonable charge for the management fee for Flat 1 for the year ended 31st December 2017 and on account for the years ending 31st December 2018 and 2019 is £280 for each year.

3. None of the administration fees or charges listed in the statement of account for late payment charges (as described in the decision below) dated 18th September 2019 are reasonable or chargeable.

4. None of the fees charged in respect of accountancy fees for the year ended 31st December 2017 and on account of the years ending 31st December 2018 and 2019 are reasonable or chargeable.

5. It is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

REASONS

1. Emily Hobbs is a co-registered proprietor of Flat 1, 21 Inglewood Road, and should therefore be joined as a party in order to be bound by the outcome of these proceedings, in accordance with the overriding objective. Mr Robinson is her husband.

2. This was one of the worst prepared applications we have dealt with. It was not rocket science to prepare this application in a way which could have assisted this Tribunal, but we hope that the following points will serve as a reminder to both parties that if they find themselves litigating in the Tribunal again, things could and should be handled differently. Mr Robinson made a *s27A* application on 14th October 2019 in respect of the years dated 2017, 2018 and 2019 and in respect of 2020 as a future year. He included a *s20C* application. We have concluded that we are properly concerned with the years 2017-2019 for which we have evidence. We do not adjourn the issues of the 2020 accounts: it is simply that once they are charged or estimated, the Applicants might have something on which to base a new application, though we hope this will not be necessary.

3. Judge Hewitt provided detailed directions at a case management conference on 19th November. As he indicated, it was regrettable that neither party attended. For today's hearing, of which the parties were notified on 19th November 2019 and again by letter of 21st January 2020, Ms Feliciano arrived after 10am, and Mr Robinson at 11am,

having been chased by the Tribunal as to his whereabouts, and having forgotten what date the hearing was. He jumped into a taxi and we waited. Neither came armed with any of the trial bundles they had supplied the Tribunal, just carrying mobile phones. Ms Feliciano has worked for the Respondent as a managing agent for a few months, manages 21 Inglewood Road, but has never read the lease, and was entirely unfamiliar with any of the issues we raised with her, except as to tell us what the policy might be in relation to particular questions. It is unacceptable to rely on an employee in that uninformed situation as a representative of a party at a judicial hearing to investigate and find facts, not to mention being arguably unfair on Ms Feliciano. It is a breach of the overriding objective and the duty to co-operate with the Tribunal in an efficient management of a hearing.

4. Further directions and extensions of time were given by Judge Vance on 21st January. Neither party managed to apply themselves to fulfilling the requirements of either set of directions. In particular, the trial bundles (there were two, one from each party) contained no evidence of the basis on which any of the charges were made (except in relation to insurance), the reason being, as Mr Robinson explained (and we accept) (i) when he attended the Respondent's offices in 2018 he saw a pile of mostly handwritten invoices relating to 2017 (but which he still should have copied into the bundles despite regarding them as hopeless evidence) and (ii) he has never been supplied, despite request, with invoices supporting the 2018 and 2019 statements. The Respondent singularly failed to supply them for the Tribunal. The Applicant did not bring his copies. Ms Feliciano said that using local contractors to keep costs down meant that many invoices were handwritten. We are still entitled to see copies. Apart from anything, that is part of the managing agent's job.

5. There was a pile of documents in the court file most of which had not made their way into the trial bundles. Between the trial bundles (not paginated) and the pile in the court bundle we extracted the following documents which were of most assistance, apart from the lease and the very limited pleadings on either side:-

   (i) a documented headed "Service Charges Policy" on Norstown Properties Limited headed notepaper, "updated as at May 2018" which provides a flat rate sliding scale managing fee for properties based on studio/bedroom number;

   (ii) the "Report of Annual service charges and costs for the year ended 31st December 2017" indicating that the landlord's name is J. Fattal (it is not, but the Applicant took no point on this) under cover of a letter dated 15th May 2018;

   (iii) a document headed "Service charge demand" (again giving J. Fattal as the landlord but Norstown details for payment as in

(ii)) dated 26th February 2018 being an on account/estimated demand for 2018;

(iv) a document headed "Statement of Account" (with the correct landlord) dated 18th September 2019 asking the Applicants to pay a balance due at that date, which includes both arrears and on account items. This appears to be a demand for payment but not supported by clause 5(2) controls.

6. Armed with these documents, the pleadings, the application and the directions, together with helpful input from Mr Robinson in the course of discussion about what exactly his case *was as at today*, the issues for the Tribunal are (for 2017-2019):-

   (i) Management fees

   (ii) Accountants' charges

   (iii) Late payment fees.

   We are grateful to Mr Robinson for confirming that he did not wish to pursue other individual items or the question of insurance premiums, as to which he did not bring any evidence of his own as to reasonableness, and as to which, in contrast to the other items, we had some evidence to work on. Our decision in relation to the on account/estimated demands for 2018 and 2019 does not in our opinion prevent the Applicants from returning to the Tribunal with a challenge to any final account if the facts justify it.

7. We think it sensible to draw attention to the relevant provisions of the lease and the arrangement of the property. This will explain the reasoning behind our decisions. To start with, the Flat is one of 6 in a converted Victorian or Edwardian building. Flat 1 is the ground floor flat at 21 Inglewood Road (NGL904393). There is a garden flat below, confusingly referred to as 21a (Rajapakse and Mirando, NGL909657). There are two flats on the first floor. One is NGL912033, registered to Ms Sotnik (known as Flat 3). The other is owned by the Respondent and is not subject to a registered lease. On the second floor there are also two flats. Flat 5 is registered to Mr Shirazi (NGL731394). The other flat is owned by either Mr Fattal or the Respondent (it is said, but it must be the latter on the basis of the O.C.E.) but is not subject to a registered lease. The Respondent is registered as the proprietor of the freehold (LN186307).

8. The lease is dated 30th May 1989 and demises the Flat for 99 years from 25th December 1988. A particular definition is provided in clause 1(a)(vi) of *"due proportion"* being *"such sums as the rateable value of the Flat bears to the total rateable value of all those flats comprised in*

the Building". Fortunately, Mr Robinson accepts that 22% is the *"due proportion"* for Flat 1, there being no evidence on which we could have made such a finding. His share of the insurance premium (payable as rent) is based on the *"due proportion"* calculation (clause 2).

9. The Lessee's covenants are contained in clause 4. Of interest are clause 4(1)(f) (the liability to pay expenses in connection with *s146* proceedings) but in relation to the service charge the liability is set out in clause 5(2). It divides roughly into two parts. First there is a liability to *"contribute and pay on demand a* ***due proportion*** [our emphasis] *of the reasonable and proper costs charges fees expenses outgoings and matters mentioned in the Fourth Schedule hereto on receipt of a certificate containing a summary of the Lessor's expenses and outgoings in any one year … or such other sum as may be reasonably determined necessary by the Lessor on account of such liability .."* This provides for payment of a due proportion of expenses "certified" as due, or monies on account. This requirement is subject to a proviso *"that the Lessee shall pay to the Lessor within 7 days of written demand final audited accounts having been produced or be entitled to receive from the Lessor the balance by which the said contribution falls short of or exceeds the actual amount of the service charge payable hereunder in any one year."* This part of the clause provides for a final year end adjustment to be made on production of audited accounts.

10. The Respondent's liabilities are contained in clause 6 and include insuring (clause 6(2)) as well as the usual repairing etc liabilities (see clause 6(4)(5)(6). Pursuant to clause 6(8) it is the Respondent's liability to pay service charges in respect of any flats not let on the terms of the (registered) lease of Flat 1. Therefore, in this case it is evident that part of the service charges for 21 Inglewood Road will be met by the Respondent in respect of two flats, according to the documents before the Tribunal.

11. Pursuant to the *Fourth Schedule*, the service charge contributions are derived first from a share of costs etc incurred by the Respondent (i) pursuant to clause 6(2)(4)(5)(6) and (ii) *the reasonable cost of management of the Property and in particular the costs of employing managing agents to provide the services.*

12. Starting with the managing agents' fees, we managed to extract the following information from the Respondent by dint of giving Ms Feliciano the opportunity to ring the Respondent and acquire the relevant information. For 2017 the Respondent charged £140 pa for each of the two studio flats in the building, £180 for each of the three one-bedroomed flats in the property, and £450 for Flat 1, as a two-bedroomed flat, total £1270, so Flat 1 accounts for 35% of the total (roughly), as opposed to the normal share of expenses at 22% ie the *"due proportion"*. Mr Robinson argues that an arbitrary sliding scale is wholly unreasonable as there is no basis on which to charge more for

Flat 1. The Respondent's pleading misses the point and argues that the management charge is reasonable given the costs of maintaining and running the property as well as sorting out a long running (8 year) party wall issue with 23 Inglewood Road. Since the *"main structural walls of the Building"* are not demised to Flat 1 and it is questionable whether clause 6(4)(5)(6) enables the Respondent to charge in respect of managing a party wall dispute in any event, the Respondent's explanation does not justify the decision or its weighting against Flat 1. Furthermore the lease provides that the service charge can only recoup *"the reasonable cost of management of the Property"* and it is quite clear that the Lessee's contractual liability is a "*due proportion"*) see clause 5(2). So whereas the total £1270 for the whole of 21 Inglewood Road for managing 6 flats is reasonable, the allocation of more than 22% to Flat 1 is unreasonable because not chargeable in accordance with the lease.

13. The same reasoning applies to the estimated figures of £460 for 2018 and whatever figure is included in the estimated service charge figure of £1457.26 for 2019, which on Ms Feliciano's evidence would be £470. As to the increase of £10 pa for 2018 and 2019 there is no evidence to justify those increases as reasonable and we approach the 3 years on the basis that £1270 pa is reasonable.

14. We therefore conclude that a reasonable charge for the management of the building for each of 2017/2018/2019 is £1270 and therefore it follows that the correct allocation to Flat 1 is £279.40, or £280 for convenience. If the actual management charges for 2018 and 2019 are higher, then the Applicants can challenge the amounts pursuant to *s27A*, but we see no basis on which the Respondent is entitled to charge an arbitrary figure when the provisions of the lease are clear.

15. The next issue is the reasonableness of accountancy fees. In 2017 the charge (for the six flats) was £250, the same for 2018 on account, unknown for 2019 on account. There is however no sign of any work done or invoice paid by the Respondent. At most we have found a report dated 14th May 2018 attached to the final 2017 demand described as a "Report of factual findings to the Landlord/Managing Agent of Flat 1" by Alnoor Jiwa ("Accountant/Financial Controller" but no qualifications cited). For a start the work is described as limited as a report to the Landlord but for no other purpose, with no assumption of responsibility to anyone else. Secondly the report makes it clear that no audit or investigation in accordance with any recognised standards has been carried out, and it is limited to "factual statements". There follows a "Report of Factual Findings" which records (1) that "the figures in the accounts are in agreement with the accounting records" (2) that "the entries for expenditure in the accounting records were adequately supported by receipts or other documentation or evidence" and (3) the bank balance for the service charge account reconciles. As a report to the Respondent, it is neither a "certificate" as required by the first part

of clause 5(2) nor an “audit” as required by the second part of clause 5(2).

16. It follows that on the limited evidence before us we can see no basis for charging £250 for each of the years in question at all.

17. The next item is the matter of late payment charges. The first point is that we see no contractual basis for levying these charges in the lease. These charges do not amount to recoverable charges within clause 4(1)(f) on the basis of the information or evidence before us. As the Respondent says, no s146 notice has ever been served on the Applicants. There are no other provisions in the lease which provide for fixed administration charges to be levied or for the payment of variable administration charges: *Schedule 11 Commonhold and Leasehold Reform Act 2002*.

18. On that basis alone we disallow all late payment/administration charges for the years in question.

19. The Respondent charges late payment fees in the same way it levies managing charges – on a scale. The late payment charges raised against the Applicants are listed in the 18th September 2019 statement of account as follows

    (i) 6th September 2018 service charge payment reminder £60 (for year 2017)

    (ii) 8th September 2018 late payment fee – yearly service charge £80 (for year 2018)

    (iii) 8th September 2018 late charge building insurance premium contribution £130 (for year September 2017 - 2018)

    (iv) 31st December 2018 late charge building insurance premium contribution £130 (for year September 2018-2019)

20. Apart from the problem of contractual liability, we add, for the avoidance of doubt, that there is no evidence as to service of demands (when/how), so there is no evidence of late payment, and there is certainly no evidence of service of any certified or audited summaries accompanying service charge demands in accordance with clause 5(2). So we have no way of knowing on the evidence before us how or why the payments were “late” as claimed by the Respondent (though Mr Robinson says it was because he was asking for evidence of the amounts charged in the service charge demands: obviously if those demands were certified or audited, he might have relied on the figures demanded). The Respondent could and should have responded to the

point about late payment fees properly in the pleading, but again missed the point.

21. In addition, at the hearing, the Applicant applied for an order under s*20C* of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines (although the Respondent indicated that no costs would be passed through the service charge), for the avoidance of doubt, that it is just and equitable in the circumstances for an order to be made under *s20C* of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. The Respondent has ignored the lease as properly construed in relation to the contested issues and a *s20C* order is justified.

Judge Hargreaves

John Barlow JP FRICS

26th February 2020

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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) the appropriate 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.]

<u>Section 20B</u>

(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.

<u>Section 20C</u>

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

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

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate 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 the appropriate 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).