



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

Case Reference : **Claim G4AY70G3
LON/00BG/LSC/2020/323
V:CVPREMOTE**

Property : **26 Shackleton Court London E14
3QF**

Applicant : **Maritime Quay Shackleton Court
RTM Company Ltd**

Representative : **Mr C Sinclair of Counsel**

Respondent : **Mr A A G Marshall**

Representative : **In person**

Type of Application : **s27A and s20C Landlord and Tenant
Act 1985**

Tribunal Members : **Judge F J Silverman MA LLM
Mr A Harris LLM FRICS FCIArb**

Date and venue of Hearing : **30 June 2021**

Date of Decision : **30 June 2021**

DECISION AND ORDER

The Tribunal finds that the Respondent's defence to the Applicant's claim for service charges costs and interest under the lease to be unsubstantiated. For the reasons stated below the Applicant's claim succeeds and the Respondent is ordered to pay to the Applicant the sum of £11,036.06 representing outstanding service charges, costs interest and solicitors' costs on or before 14 August 2021.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The document which the Tribunal was referred to are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

- 1 The Respondent is the tenant and long leaseholder of Flat 26 Shackleton Court Maritime Quay London E14 3QF (the property) of which the Applicant is the management company.
- 2 The Applicant issued proceedings in the County Court seeking recovery of service and administration charges, ground rent, interest and costs in the sum of £3,284.98 relating to the property. The sums claimed are those which were due from the Respondent on account between 12 February 2019 and 1 February 2020.
- 3 The matter was transferred to the Tribunal on 06 October 2020 with jurisdiction for the Tribunal to adjudicate on all outstanding matters.
- 4 Directions were issued by the Tribunal on 28 October 2020, 15 March 2021 and 20 April 2021.
- 5 The Tribunal received and read over 200 pages of electronic documentation, including the parties' respective statements of case, and witness statements which are referred to below.
- 6 The hearing took place by way of a remote video (CVP) link to which the parties had previously consented.
- 7 The Applicant was represented by Mr C Sinclair of Counsel and the Respondent appeared in person. For the Applicant the Tribunal heard

evidence from Ms Durban and the Respondent spoke to his statement of case.

- 8 In accordance with current Practice Directions relating to Covid 19 the proceedings were recorded and the Tribunal did not make a physical inspection of the property but were able to obtain an overview of its exterior and location via GPS software. The Tribunal understands that the subject property is a flat on the fifth floor of a modern riverside development and has the benefit of electronic door entry and underground parking.
- 9 The Tribunal understands that the Respondent's lease dated 29 October 1999 and made between Redrow Homes (South East) Ltd as freeholder (1), OM Ltd as Manager (2) and Waterside Property Services Ltd as tenant (3), demised the property to the tenant for a terms of 125 years from 01 April 1998 (page 40).
- 10 The lease entitles the Applicant to levy and recover service charges ground rent and interest and contains a covenant by the tenant to pay the same (clause 3 and eighth schedule). The tenant's proportion of the charges is set out in the seventh schedule to the lease (page 56) and includes both block and estate costs.
- 11 It is understood that until recently the Respondent had been living abroad and the property had been sub-let but that the Respondent had returned to the UK and, with his family, had been living at the property from January 2020.
- 12 The sums claimed by the Applicant in respect of service charge (£1,430.19) are set out in the statement of account on page 68 with the balance of the claim being made up of costs and interest.
- 13 A letter before action was sent to the Respondent on 14 May 2020 followed by the issue of a county court proceedings on 01 June 2020 and service of the particulars of claim on 05 June 2020.
- 14 The Respondent's only defence to the county court proceedings claimed that he had not received the letter before action or particulars of claim (page 69) coupled with a general allegation that the Applicant itself was in breach of covenant. He did not challenge either the fact that the money claimed is owing or that the amounts claimed are correct. His statement of case for the Tribunal proceedings is dated 17 December 2020 (page 72).
- 15 In his statement of case the Respondent challenged the charge of £192 which related to a **plumber's visit** to inspect the property in June 2019. The plumber was given access to the property by the tenant who was living in the property at that time. The Applicant had sent three letters (emails)(page 156) to the Respondent asking him to confirm/clarify the status of an ongoing leak/repair from the property which had been causing a water ingress into flat 20 on the floor below.

Because the Respondent had previously been living abroad he had requested that communications with him should be made by email and not by regular post. The Applicant said they had not had a response from the Respondent in relation to their letters and needed to clarify the situation for the benefit of flat 20. The Respondent said that the inspection had been without notice and unnecessary because the leak had stopped. The Applicant said that their plumber had found that the leak had been stopped by turning off a stopcock but that the necessary repair which was the Respondent's responsibility had not been carried out. The Respondent also challenged the amount of this charge and said that a call out fee of £50 was a reasonable sum in these circumstances but produced no comparative quotes to support this contention. Having considered the arguments put forward by both parties and the fact that the Respondent's views were unsupported by evidence or comparative quotations, the Tribunal prefers the Applicant's version of events and finds the charge of £192 to be reasonable and payable in these circumstances.

- 16 The Respondent also objected to a charge of £486.74 which the Applicant agrees he paid (as part of a larger payment of £1,578.57) in January 2020. This payment related to ongoing **water ingress** works which affect the block as a whole and which concluded earlier this year. Having paid this sum it appears that the Respondent is seeking a reduction of it from the amount currently outstanding on the basis, he asserts, that the problem is still outstanding. However, the Respondent's desired deduction relates not to the block works which were the subject of the charge, but to separate damage which he says has occurred to the interior of his own flat. Since the Respondent has not demonstrated either that the damage to his flat arises from the block works or the cost of the necessary repairs, the Tribunal declines to allow this deduction.
- 17 The Respondent objected to an **administration charge** of £90 levied by the Applicant's managing agent for issuing reminder letters to the Respondent. Such sums are permissible under the terms of the management agreement between the agents and the Applicant and in the absence of any comparative evidence from the Respondent the Tribunal finds this sum both payable and reasonable.
- 18 The Applicant agreed to apply a credit of £100 to the Respondent's account to compensate for inconvenience suffered by him and his family on 11 June 2020 when the **water** for the property (not just this flat) was cut off while chlorination works were carried out. Although notice of the interruption to the service had been sent to the other leaseholders, no copy had been sent to the Respondent because of the pending legal action against him. The Respondent accepted this concession which had been taken into account (ie already deducted) from the sum claimed by the Applicant in the present proceedings.
- 19 Similarly, the Applicant acknowledged and gave credit in the proceedings to the sum of £145.73 which had been paid on account by the Respondent but not previously credited to his account. Pending the

issue of proceedings the sum had been held in a suspense account in order to avoid any suggestion of waiver of the breach through acceptance of part of the debt.

- 20 Although the Applicant said that the Respondent's complaints about the main gate and **garage remote fobs** were the responsibility of the freeholder and not themselves they agreed to make an ex gratia goodwill concession of £33.40 to the Respondent in relation to these matters. This sum will therefore be deducted from the amount due from the Respondent.
- 21 The Respondent made a number of other observations about the property for example, that **access to both the main door** and garage were difficult for persons with a pushchair or those who needed wheelchair access and disrepair to a staircase which had caused him to sustain an injury (not evidenced in the bundle). Since these issues do not impinge on the outstanding service charges which are the subject of this application they are not further discussed here.
- 22 The Respondent said that he had been unaware that proceedings for recovery of the service charge had been commenced against him and thus he had not had a proper opportunity to defend the claim. The Applicant's letter before action (page 112 et seq) was served by post by their solicitors on 14 May 2020 and is therefore deemed served in accordance with s196 Law of Property Act 1925. The Respondent had returned to live in the property full time in January of that year and the Tribunal considers it unlikely that he would have not have received that letter. He was clearly aware of the county court proceedings themselves because he entered a defence to them and could at that time have contacted the Applicant's solicitor to ask for details of the claim or could have paid a sum into court on account or take legal advice himself. The Tribunal does not accept his assertion that he was not given a proper opportunity to defend the claim. He has in any event had a full opportunity to do so before this tribunal but has not substantively challenged any of the sums demanded by the Applicant.
- 23 The Applicant offered the Respondent a further period of discussion over the lunch break which the Respondent declined.
- 24 By Schedule 8 Clause 4 of the lease the Respondent is liable to pay all expenses including legal fees incurred by the landlord in these proceedings. Interest on overdue sums is also payable at the rate of 4% over Barclays Bank plc base rate or 20% whichever is higher (Schedule 8 para 3, see page 56).
- 25 In the present case the Tribunal, exercising devolved powers from the county court is entitled to assess the Applicant's costs in accordance with CPR rule 44.3 (1)(b) on an indemnity basis which also provides that any doubt over the reasonableness of costs may be decided in favour of the receiving party (rule 44.3).

- 26 The Applicant's solicitor's statement of costs asks for hourly rates of £215 for a grade B fee earner and £190 for a grade D fee earner (both ex VAT) to be allowed. Neither of these sums is excessive for fee earners in a provincial firm and both are approved.
- 27 The total sum claimed by the Applicant's solicitors as costs in this relatively simple claim is £10,524.00 including £1,250 in Counsel's fees. The claim itself is valued at £3,603.21 (made up of service charges £1,430.19, costs £1,817.80, and interest to date £388.81 minus the Applicant's ex gratia allowance of £33.40).
- 28 Costs exceeding £10,000 (including counsel's fees) appear to be totally disproportionate to the size of the claim and the Tribunal exercises its discretion to reduce them by 30% overall, excluding counsel's fee. This results in an award of £6,182.66 (£9,274 minus £3,091.33) in solicitors' costs and total costs payable by the Respondent of £7,432.66 (£6,182.66 plus £1,250 counsel's fee).
- 30 No order was requested or made under s20C Landlord and Tenant Act 1985 or para 5 Sched 11 Commonhold and Leasehold Reform Act 2002.
- 31 In summary, the Tribunal finds that the Respondent's defence to the Applicant's claim for service charges costs and interest under the lease to be unsubstantiated. For the reasons stated above the Applicant's claim succeeds and the Respondent is ordered to pay to the Applicant the sum of £11,036.06 made up as follows:

Outstanding service charge	£1,430.19
Costs included in claim	£1,817.80
Interest to date of decision	£388.81

	£3,636.80
Less ex gratia	£ 33.40

	£3,603.40
add Solicitor's costs	£7,432.60

Grand total	£11,036.06

32 The Law

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.]

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.

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).

Section 47 Landlord and Tenant Act 1987

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

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

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

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1 or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2 or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3 or (as the case may be) administration charges] from the tenant.

(4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1) A tenant may withhold payment of a service charge if—

(a) the landlord has not provided him with information or a report—

(i) at the time at which, or

(ii) (as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a) the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3) An amount may not be withheld under this section—

(a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) 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.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a) for inspecting the accounts, receipts and other documents supporting the summary, and

(b) for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as

precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 30 June 2021

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.