



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

Case reference : **LON/00AF/LSC/2019/0423.**

Property : **68 Framlingham Crescent, London.
SE9 4AF.**

Applicant : **Ms. Sherron King.**

Representative : **In person.**

Respondent : **Afaad Limited.**

Representative : **Mr. Ibrahim Egbejobi**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge under S.27A
Landlord & Tenant Act 1985, and to
limit the landlords costs of
proceedings under S.20c Landlord
& Tenant Act 1985.**

Tribunal members : **Ms. A. Hamilton-Farey
Mr. M. Cairns
Ms. N. Carr (Observer)**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **17 February 2020.**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that, having agreed the service charges for the year 2018, the total sum demanded is due and payable by the applicant within 28 days.
- (2) The tribunal determines that for the year 2019, the charges in relation to the scaffolding and roof repairs are disallowed, because the landlord has not demanded them in accordance with the lease, and has not sent the applicant a copy of the Summary of Rights and Obligations in relation to service charges with that demand. Until the landlord complies with that legislation, none of these costs are recoverable.
- (3) If the tribunal is wrong in that decision, it considers that the cost of the scaffold and repairs are limited to £500.00 and £250.00 respectively because the landlord has not complied with the requirements to consult the leaseholder under S.20 of the Landlord & Tenant Act 1985.
- (4) The tribunal allows the sum claimed for the insurance premium, which is considered to be reasonable and supported by evidence of the premium receipt and policy schedule. We consider the applicant to be liable for their proportion of the premium paid, being £334.23, and the tribunal therefore awards the applicant to pay that amount within 28 days.
- (5) The tribunal determines that the management fee of £150.00 claimed by the landlord is reasonable and payable within 28 days.
- (6) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (7) The tribunal determines that the Respondent shall pay the Applicant £300.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant. This sum may be deducted from the amounts payable by the applicant as determined by this decision.
- (8) The respondent in the proceedings agreed that a repayment of £156.00 paid by the applicant in relation to roof repairs, would be repaid to the applicant once the service charges had been paid. The tribunal is unable to make a determination that the applicant 'sets-off' that £156.00 from the amounts deemed to be payable.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and management fees payable by the Applicant in respect of the service charge years 2018 and 2019.
2. The application is dated 30 October 2019, Directions were issued by the tribunal on 11 November 2019 that required the parties to supply bundles of documents on which they wished to rely in support of their cases. In the event, neither party complied with the directions fully, and the tribunal relied on the parties statements of case and reply and the original application.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant and Respondent appeared in person at the hearing.
5. Prior to the hearing, the applicant conceded the service charge claim in relation to 2018, and having agreed to pay this to the landlord, the tribunal has no residual jurisdiction in relation to the charges for this financial year.

The background

6. The property which is the subject of this application is a maisonette on ground, first and second floors of a building that was originally presented as an office on the ground floor with the applicant’s flat above. The respondent acquired the freehold and converted the ground floor into two self-contained flats.
7. The Applicant holds a long lease of the property, following her exercise of the Right to Buy from her secure tenancy with the housing association that originally owned the freehold reversion.
8. It is accepted that the lease requires the respondent to provide services and the tenant to contribute 68.83% of their costs by way of a variable service charge. 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.
9. It transpired during the hearing that the previous landlord, Amicus Horizon, had not complied with the terms of the lease in relation to the preparation of a budget and then demand for service charges, and the

applicant told us that she just paid her service charge monthly and received no reconciliation at the end of the year, and no further demand for service charge.

10. In this case, the landlord has not complied with the lease, and does not know the legislation. He confirmed to the tribunal that he only owned one leasehold property and was not attempting to make a profit from the applicant and had, consulted her, albeit informally, on the works. He was not aware of the legal requirements to consult that would limit a landlord's ability to recover service charges. He had produced a schedule of expenditure for the applicant, but this had not complied with the terms of the lease.

The issues

11. At the start of the hearing the applicant identified the following issues for determination as follows:
 - (i) The payability and/or reasonableness of the service charge for the year 2019 in relation to the insurance premium, the cost of scaffolding for roof repairs, the roof repairs, and the administration fee/management fee levied by the landlord.
12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

13. Insurance: The applicant disputes liability for the insurance charge of £334.23 on the basis that no proof had been provided by the landlord, that the premium had been paid, or the property was properly insured.

The tribunal's decision

14. The tribunal determines that the amount payable in respect of insurance is £334.23.

Reasons for the tribunal's decision

15. During the hearing the landlord referred to his bundle in which he provided details from the insurers to show that the property was insured, that the premium had been paid and apportioned correctly under the lease.
16. Although the applicant said that she was not aware what the insurance covered, we considered she had been provided with sufficient

documents for her to see the level of insurance and satisfy herself that the insurance was in place and the premium reasonable.

17. In addition, it appeared the applicant wished the landlord to make a claim under the insurance for the roof repairs, although she was aware from conversations with the landlord the roofs were in poor condition and required repairs and/or replacing. The tribunal was not provided with any evidence to show that an insurable event had occurred that would warrant an insurance claim being made.

Service charge item & amount claimed:

Scaffolding costs:

18. The respondent claims a total of £700.00 for scaffolding costs. Both incidents relate to roofing works. In the first instance the landlord paid £450 cash to a scaffolder to erect the scaffolding for the roof repairs. The applicant accepts the scaffold was in place and repairs were carried out, but says she believes the scaffold was up for too long, and because the landlord paid cash there was no evidence payment had been made.

The tribunal's decision

19. The tribunal determines that the amount payable in respect of scaffolding costs would be reasonable at £500.00. However, the demands for payment are in the tribunal's opinion, invalid because they were not accompanied by a summary of rights and obligations of tenants in relation to service charges, and the demand for payment is not in the prescribed form. .

Reasons for the tribunal's decision

20. The landlord agreed that no formal consultation had been carried out in relation to the scaffolding costs and accepted that he had no knowledge of the legal requirements to consult leaseholders before carrying works.
21. The legal position is that a landlord is only able to recover £250.00 without consulting a leaseholder in relation to works. In this instance therefore we would limit the cost payable by the applicant to £250.00, but for the fact that the landlord has not complied with the statutory requirements with respect to the demanding of service charge.
22. With respect to the second cost for scaffolding, the landlord has claimed £250.00, and we again would therefore allow this amount on the basis that it is the threshold for consultation, but for the fact that the landlord has not complied with the statutory requirements with respect to the demanding of service charge.

Roofing works:

23. It was not disputed by the applicant that the dormer roofs on the building required repair or replacement, and that a leak occurred into her building. She also acknowledged that repairs had been undertaken by the landlord.
24. The applicant's complaint was that she had not seen an invoice in relation to the costs claimed. This has now been supplied by the landlord as part of the hearing bundle, and confirms the cost of £350.00, as claimed by the landlord. We find the applicant to be liable for her proportion of those costs, as and when the landlord complies with the statutory obligations in relation to the demand of service charge.

Management Fees:

25. The applicant considered the 'administration fees' charged by the landlord to be excessive. The sum charged is £150.00 per annum.
26. The tribunal considers this to be a management fee allowed for under the terms of the lease and not an administration fee. It is clear the landlord has carried out some management of the property, he has carried out repairs and insured the building and produced a statement of expenditure. On balance we find the amount claimed to be reasonable and payable by the applicant within 28 days.

Generally:

27. The landlord informed the tribunal that he intended to place the management of this tenancy with a managing agent, because it was difficult to deal with the legal requirements and the demands of the applicant.
28. This would obviously be a more expensive option for the parties, because in this tribunals experience managing agents would not manage a single property such as this for £150.00 per annum, and there would likely be other fees and expenses not presently charged; for example a managing agent and any contractors used would charge VAT, and there would be a fee for preparation of annual expenditure certificates.
29. This is obviously something the landlord should explore in conjunction with the applicant, but is not something for this tribunal.

Application under s.20C and refund of fees

30. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application/hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the respondent to refund any fees paid by the applicant within 28 days of the date of this decision.

31. In the application form the applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Aileen Hamilton-Farey **Date:** 17 February 2020.

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

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 (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).