



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

**Case reference** : **LON/00AN/LSC/2021/0137**

**HMCTS code** : **P: PAPERREMOTE**

**Property** : **Flat 2, 58 Perham Road, London W14  
9SS**

**Applicant** : **Miss Gaynor McAdam**

**Representative** : **N/A**

**Respondent** : **Wingdawn Property Company Limited**

**Representative** : **Wilmott Property Services Limited**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge Robert Latham  
Mr A. Fonka, MCIEH CEnvH M.Sc**

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

**Date of decision** : **15 September 2021**

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**DECISION**

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### **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers. The Applicant indicated that she was content with a paper determination and the Respondent has not objected to this. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same. The Applicant has prepared a Bundle of Documents which total 272 pages. This has been broken down into six attachments. References in this decision to “3.4” refers to the electronic page 4 of Attachment 3.

### **Decisions of the Tribunal**

- (1) The parties have compromised the claim in respect of the excessive electricity charges. The Respondent has credited £250 to the service charge account.
- (2) The lease places no obligation on the landlord to provide a service charge budget when it demands the payment of an interim service charge.
- (3) The lease does not permit the landlord to operate a reserve fund. The Tribunal is satisfied that the Respondent has now credited any sums retained in respect of the reserve fund back into the Applicant’s account.
- (4) 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 Applicant through the service charge.

### **The application**

1. By an application dated 19 March 2021, the Applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant in respect of the service charge years 2014 to 2021. The Applicant provided an eight page summary of the service charge items which she disputes.
2. The application relates to the flat which the Applicant occupies at Flat 2, 58 Perham Road, London W14 9SS (“the Flat”). This is a one bedroom flat on the ground floor in a mid-terraced house which has been converted into four flats/maisonettes on the basement, ground, first and second floors. The Applicants contribution to the service charge account is 22%.
3. On 14 May, the Tribunal gave Directions (at 1.20). The Procedural Judge identified the following issues to be in disputed (albeit that it was

noted that these might be amplified by the parties in their statement of cases):

(i) 2014 – EDF account (excessive electricity charges) and refusal to provide schedule of estimate of service charges.

(ii) 2015 – EDF account (excessive electricity charge) and refusal to provide schedule of estimated service charges.

(iii) 2016 – EDF account (excessive electricity charges) and refusal to provide schedule of estimated service charges.

(iv) 2017 – increase in Reserve Fund from £750 to £835.62 (reserve fund not permitted by lease) and EDF account (excessive electricity charges) and refusal to provide schedule of estimated service charges.

(v) 2018 – Reserve fund contribution increase unreasonably to £1,905.02 and not permitted by lease or not credited to the applicant's account, EDF (unreasonable electricity charges) and refusal to provide a schedule of estimated service charges.

(vi) 2019 – Reserve fund unreasonably increased to £2,817.12 and surplus not credited to the applicant's account EDF (unreasonable electricity charges) and refusal to provide schedule of estimated service charges.

(vii) 2020 – Reserve fund unreasonably increased to £2,817.12 and surplus not credited to applicant's account, EDF account (excessive electricity charges) and Estimated Service Charge failure to reflect the surplus amount accrued at y/e 2019 in the sum of £2,817.12.

(viii) 2021 – Unreasonable Reserve fund demand in the sum of £2,000+, EDF account (excessive electricity charges), condition survey of £600 charged although Management Fee provides for an annual Condition Survey and refusal to provide Schedule of Estimated Service Charges

4. The Applicant had indicated that she was content for a paper determination. The Procedural Judge therefore allocated the case to the paper track. Provision was made for the parties to request an oral hearing by 16 July. Neither party has done so.
5. By 11 June, the Respondent was directed to disclose to the Applicant copies of all relevant service charge accounts and estimates for the years in dispute (2014 to 2021) together with all demands for payment and details of any payments made. On 8 June, the Respondent disclosed these. The Respondent acknowledged that there was an oversight in creating a reserve fund account for the property and crediting historical surpluses to this account.

6. On 24 June 2021, the parties held a “without prejudice meeting” to seek to resolve the issues in dispute (at 2.39). The Applicant attended, accompanied by Mr Marc Collini, the lessee of Flat 3. Mr Graham Fisher and Mr Damian Tustin attend on behalf of Willmott Property Services Limited (“Willmotts”), who are the landlord’s managing agents. Such a meeting would normally be privileged. However, it is apparent that the parties resolved a number of the issues in dispute. It is therefore appropriate for the Tribunal to have regard to these to determine the outstanding issues between the parties which need to be determined by the tribunal. The Respondent states that agreement was reached on all the issues in dispute with the exception of the condition survey budget which was included in the 2021 budget. This was resolved shortly after the meeting.
7. The major item in dispute was the electricity charges. Mr Fisher advised that the reason for the higher charges related to E.ON increasing the standing charge to 80p in 2019. On 1 June, the Willmotts changed the account to SE. The Applicant stated that she had been unaware of the change of supplier. It was agreed that in future, if the tenants wished to change the supplier, they should advise Willmotts and present new quotations. Willmotts agreed, as a gesture of goodwill, to make a credit to the service charge account. This was agreed. This credit was subsequently increased to £250. The electricity charges are therefore no longer a live issue.
8. In their disclosure letter, the Respondent had acknowledged that there was an oversight in creating a reserve fund account for the property and crediting historical surpluses to this account. This was noted at the meeting. However, the matter was not discussed in any greater detail. Had the Applicant raised her concerns, this might have reduced the issues that the Tribunal is now required to determine.
9. Pursuant to the Directions, the Applicant has prepared a Schedule of Disputed Service Charges (“the Schedule”) for the Years 2014 to 2021 at 1.26-38. The Tribunal has identified the following issues to be determined:
  - (i) The Applicant contends that the Respondent is obliged to provide an Estimate of Service Charges when any interim service charge is demanded. The Respondent denies that the lease requires the landlord to do so.
  - (ii) The Applicant challenges a number of historical surpluses which the Respondent now conceded was wrongly credited to a reserve fund. This relates to the Service Charge Years 2017 (items of £835.62 and £85.62 are disputed); 2018 (items of £1,905.02 and £1,069.40); 2019 (items of £2,817.12, £912.10 and £619.77); 2020 (items of £330.26) and 2021 (£619.77, £2,817.22, £619.77 and £440).

10. Pursuant to the Directions, the parties have also served the following:
  - (i) The Appellant's witness statement and supporting documents (39 pages)
  - (ii) The Respondents Statement of Case and a witness statement from Gaynor McAdam together with supporting documents (195 pages); and
  - (iii) A Reply and second witness statement from the Applicant (29 pages).
11. On 12 September, the Applicant sent the Case Officer an "Objection". In their Statement of Case, the Respondent had stated: "We believe that the decision to provide the £250 electricity credit to the general service charge for the property and not directly to the Applicant's account, resulted in the Applicant deciding to continue with the hearing proceedings". The Applicant responds that she "can confirm to this Tribunal that the matter of the very minor compensation of £250, either paid in full to the Applicant or shared with fellow Leaseholders, played no part in the decision to continue these proceedings".
12. In her witness statement (at 1.40), the Applicant confirms that she accepted the offer of a credit of £200 which was made in respect of the excess electricity charge. This credit was subsequently increased to £250. This issue is no longer in dispute. The Tribunal has identified the two issues which we are now required to determine.

### **The Lease**

13. The lease is dated 5 November 1984 (at 6.34) and is for a term of 99 years from 24 June 1984. By Clause 3(b), the Lessee covenants to "contribute and pay upon demand the proportion of the costs expenses outgoings and matters mentioned in the Fourth Schedule".
14. These are defined in the Fourth Schedule as:

"Twenty-two per centum of the costs incurred by the Lessor pursuant to Clause 4(b) 4(c) and 4(f) hereof including the reasonable and normal fees of any Managing Agents instructed by the Lessor in connection with such costs to be verified by annual accounts drawn to 31<sup>st</sup> day of December in each year and certified by a Chartered Accountant PROVIDED ALWAYS that THE Lessor may not more than half yearly require the payment of a reasonable sum on account of such costs any surplus to be carried forward to the next accounting period and credited to the account of the Lessee.

15. The service charges relate to the Lessor's covenants under 4(b) – to keep in repair the structure and exterior of the Building; 4(c) – to decorate the exterior of the Building; and 4(f) - to insure the Building. The lease makes no provision for the landlord to maintain a reserve fund.

**Issue 1: The Obligation to Provide an Estimate of Service Charges**

16. The Applicant argues that the Respondent is required to provide an Estimate of Service Charges when any interim service charge is demanded. The Tribunal is satisfied that the lease does not require this. The lease does provide for annual certified accounts to be provided. The Respondent has complied with this obligation.
17. Section 21 of the Act gives the tenant the statutory right to request a written summary of the costs incurred over a period of twelve months. Section 22 provides an additional right to inspect the supporting documents. However, these rights relate to sums actually expended, rather than a budget of what the landlord intends to expend.
18. Willmotts have prepared annual budgets which have informed the demands which have been made for the two six monthly interim service charges. As a matter of good practice, a landlord would provide such a budget on request.
19. On 29 December 2020 (at 2.10), the Applicant requested a breakdown of the 2021 budget. She is in receipt of Employment and Support Allowance (“ESA”) and these details were required by the Benefits Agency. The Applicant asserts that Willmotts refused to provide this information. The Respondent denies this and refers to an email, dated 18 January 2021 (at 6.4) when this information was provided. We accept this evidence.
20. The Applicant asserts that on previous occasions, the Respondent has refused to provide this information. However, no letters or emails requesting this information have been provided. The Respondent deny that they have refused any such requests. They have disclosed the budgets for the relevant years. There seems to be no reason why they would not have been provided.
21. In the Schedule of Disputed Service Charges for 2021, the Applicant raises a number of issues relating to the Respondent's failure to respond to correspondence. The Respondent has addressed these complaints in its responses. It is not the role of this Tribunal to micromanage how Willmotts manage this Building. The 1985 Act restricts our jurisdiction to determine the payability and reasonableness of any service charges which have been demanded.

## **Issue 2: The Reserve Fund Adjustments**

22. The second issue in dispute is the Respondent's decision to operate a reserve fund and the manner in which it has operated this. The Service Charge Accounts for 2014 (at 1.44) record that there was an accumulated Reserve Fund of £750 for the Building. In that year, the expenditure was £400.48 more than the budgeted expenditure of £2,900.68. On 1 June 2015, the Applicant was required to pay an additional contribution of £88.15 (her 22% share).
23. The Service Charge Accounts for 2015 (at 1.45) record that the expenditure was £174.21 less than the budgeted expenditure of £4,380. The budget is at 5.29. On 26 April 2016, the sum of £64.73 was credited to the Applicant's account (see 5.42).
24. The Service Charge Accounts for 2016 (at 1.46) record that the expenditure was £24.61 less than the budgeted expenditure of £3,200. The budget is at 5.30. On 3 May 2017, the sum of £5.41 was credited to the Applicant's account (see 5.43).
25. The Service Charge Accounts for 2017 (at 1.47) record that the expenditure was £85.62 less than the budgeted expenditure of £3,550. The budget is at 5.31. The Applicant's 22% share of £17.98 should have been credited to the Applicant's account. It was rather credited to the reserve fund. The Applicant complains of two matters: (i) the decision to transfer the sum of £85.62 to the reserve fund; and (ii) the decision to retain a reserve fund of £835.62 (of which £750 was historic).
26. The Service Charge Accounts for 2018 (at 1.48) record that the expenditure was £1,069.40 less than the budgeted expenditure of £3,660.00. The budget is at 5.32. The Applicant's 22% share of £224.57 should have been credited to the Applicant's account. It was rather credited to the reserve fund. The Applicants again complains of two matters: (i) the decision to transfer the sum of £1,069.40 to the reserve fund; and (ii) the decision to retain a reserve fund of £1,905.02 (of which £835.62 was historic).
27. The Service Charge Accounts for 2019 (at 1.49) record that the expenditure was £912.10 less than the budgeted expenditure of £3,352. The budget is at 5.33. The Applicant's 22% share of £191.41 should have been credited to the Applicant's account. It was rather credited to the reserve fund. The Applicants again complains of two matters: (i) the decision to transfer the sum of £912.10 to the reserve fund; and (ii) the decision to retain a reserve fund of £2,817.12 (of which £1,905.02 was historic).
28. The Service Charge Accounts for 2020 (at 2.8) record that the expenditure was £1,501.18 less than the budgeted expenditure of

£4,042.00. The budget is at 5.34. The Applicant's 22% share of the surplus is £330.26. The Applicant raises two matters: (i) She complains that the accumulated reserve fund of £2,87.12 was not included in the budget (at 2.60). (ii) She queries what happened to her £330.26 share of the surplus.

29. The Tribunal is satisfied that the Applicant has failed to distinguish between a budget (which does not include accumulated reserve funds) and the Year End Accounts. Any reserve fund should appear in the Final Year Accounts. A landlord holds such sums on trust for the tenants pursuant to section 42 of the Landlord and Tenant Act 1987.
30. For a number of years, the Respondent acted under the mistaken belief that it was entitled to maintain a reserve fund. It seems that the tenants were content for Willmotts to retain a reserve fund of £750 to meet any emergency. In the absence of a reserve fund, tenants could find themselves liable for large sums at short notice, for example if a new roof is required.
31. The attitude of the tenants changed when Willmotts sought to increase the size of the fund. On 25 January 2021 (at 2.18), the Applicant pointed out that the lease did not permit surpluses to be retained as a reserve fund. On 19 March, the Applicant issued her current application. On 8 June (at 2.29), the Respondent conceded that it was not entitled to retain a reserve fund. On 9 June, the Respondent rectified the position by crediting the relevant sum to the Applicant's account. The accumulated reserve fund was £2,817.12, of which the Applicant's 22% share was £619.77 (see 5.46). On 16 July, the Respondent credited a further sum of £330.26 which was the surplus from 2020 (see 5.47).
32. The budget for 2021 is at 2.16. This included a £2,000 contribution towards the reserve fund. Having accepted that they could not maintain a reserve fund, Willmotts issued a revised budget (at 5.37) which excludes the reserve fund contribution. On 8 December 2020 (at 5.11), the Respondent demanded the first six monthly payment of £769.01 based on the original budget. On 25 June 2021, the Respondent credited the sum of £220 in respect of the reserve fund contribution (see 5.46). The Applicant complains that an additional sum of £220 should be credited to the account. This is not correct. On 28 July 2021, when the second interim service charge for 2021 was debited to her account, only £549.01 (rather than £769.01) was debited (see 5.47).

### **Application under s.20C and refund of fees**

33. The issue of the refund of fees does not arise as the Tribunal has waived the fees which would otherwise be payable by the Applicant.



34. In her application form, Applicant applies for an order under section 20C of the 1985 Act. She has been successful in two of the three issues raised in this application. We are therefore satisfied 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 Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Judge Robert Latham**  
**15 September 2021**

### **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).