



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

**Case Reference** : **LON/00AG/LSC/2021/0238 V:VHS**

**Property** : **Flat 2, 14 Priory Terrace, London  
NW6 4DH**

**Applicant** : **14 Priory Terrace RTM Co Ltd**

**Representative** : **Mr Anthony Weisz, director of RTM  
company**

**Respondent** : **Mr George McLeod**

**Representative** : **Not represented and not present**

**Type of Application** : **For the determination of the  
liability to pay a service charge**

**Tribunal Members** : **Judge P Korn  
Ms S Phillips MRICS**

**Date of hearing** : **31<sup>st</sup> January 2022**

**Date of Decision** : **9<sup>th</sup> February 2022**

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**DECISION**

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## Description of hearing

This has been a remote video hearing which has not been objected to (as a type of hearing) by the parties. The form of remote hearing was **V:VHS**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in a series of electronic bundles, the contents of which we have noted. The decisions made is set out below under the heading “Decisions of the tribunal”.

## Decisions of the tribunal

- (1) This tribunal has no jurisdiction in respect of the payability of the service charges which were the subject of the county court claim, namely those for the period 29<sup>th</sup> September 2019 to 24<sup>th</sup> March 2020.
- (2) The service charges demanded in respect of the period 25<sup>th</sup> March 2020 to 24<sup>th</sup> March 2021 are payable by the Respondent in full.
- (3) The estimated service charges demanded in respect of the period 25<sup>th</sup> March 2021 to 24<sup>th</sup> March 2022 are payable by the Respondent in full.

## Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of the service charges for the service charge years 2019/20 and 2020/21 and of the estimated service charges for 2021/22.
2. The Applicant acquired the right to manage 14 Priory Terrace (“**the Building**”) on 26<sup>th</sup> September 2019, and the Applicant states that from that point the Respondent ceased to pay the service charges in full. In practice, therefore, the application seems to relate to the period from September 2019 onwards, and Mr Weisz explained in an earlier case management hearing that the first demand which has not been paid in full by the Respondent is the one issued in September 2019.
3. The Building had previously been managed by the HML Group on behalf of Gatesun Ltd, the freeholder. The leaseholders apparently decided to exercise their right to manage as they were concerned that the freeholder was proposing major works at a cost of around £100,000.
4. The Building is a terraced property which has been converted into 5 flats. The Respondent is the leaseholder of Flat 2 and his service charge contribution is 25%. There are two other flats each of which bears 25% of the service charge, and two remaining flats each of which bears 12.5%.

5. There have been significant case management issues in relation to this matter, but eventually the case was set down for a video hearing on 31<sup>st</sup> January 2022. The Respondent stated in writing that he would not be attending.

### **Applicant's case**

6. The Applicant states that the RTM company was formed with the agreement of all leaseholders. All were asked if they would like to become a director of the new company but Mr Weisz was the only one prepared to take on the responsibility. The handover date for the management of the Building was September 2019. The first service charge demands for the RTM company were sent out at the same level as had previously been charged by the freeholder's agent. It was apparent that a number of health and safety items were not being addressed by the managing agent and that any savings that the RTM company could make would be offset by these items such as the annual fire risk assessment and electrical tests. There was also other expenditure necessary such as the installation of emergency light fittings and repairs to the windows, which were in a dangerous condition. All of these additional items have been carried out with the service charges at the same level as the freeholder's agent was charging.
7. All of the leaseholders initially paid the service charge demand in full apart from the Respondent who sent a part payment. When it was requested that he settle the demand in full he refused to do so. The Respondent has accused Mr Weisz in a number of ways, including by asserting that he did not have the right to manage the Building. He has also accused Mr Weisz of profiteering from the company, but Mr Weisz states that he has not taken any money for the time that he has worked on Building management issues. The Respondent has in addition accused Mr Weisz of having a conflict of interest, an accusation which Mr Weisz rejects as absurd as it is in his interests as well as the interests of all the other leaseholders to keep costs to a minimum.
8. Mr Weisz states that he has spent a considerable amount of his time on the management of the Building, including meeting contractors on site, getting quotes for all items which need attending to, making all the payments and also dealing with the freeholder's agent. All of this, he argues, has saved the leaseholders a significant amount of money. In addition, he has been cleaning the Building and doing the gardening himself to save money and has not been paid for any of his time spent doing this work. Mr Weisz states that he has provided all of the information that the Respondent has requested throughout, but the Respondent is currently £1,940 in arrears. Another leaseholder has become aware of the Respondent's shortfall in payments and he has now withheld his own service charge payments. There are urgent works to be carried out to the Building to conform with health and safety regulations for the benefit of all of the occupants. Until all of the

leaseholders have paid their service charges in full these works cannot be carried out.

9. The Applicant has provided copy service charge accounts for 2019/20 and 2020/21, a service charge budget for 2021/22, copies of all invoices over £100.

### **Respondent's case**

10. The Respondent chose not to attend the hearing and also not to submit a statement of case. However, he has raised some specific concerns in his email to the Applicant dated 7<sup>th</sup> December 2021. He states that he does not see the need to pay £600 per annum for the submission of tax returns to HM Revenue & Customs as the RTM company is a "Not for Profit concern". In any event, paying an accountant £600 per annum for this work is in his view "arrant nonsense".
11. He states that he struggles to understand why £1,500 was paid to Ridgeway Refurbs for refurbishing communal windows when it is planned to put refurbishment of the entire common hallways and the building exterior out to tender following properly secured quotes. In addition, he has asked for an explanation as to the purpose of the £90 paid to Woodside Locksmith and the £85 annual professional subscriptions. In relation to building insurance, he asks why the Applicant budgeted for a £325 increase in insurance costs for 2021/22 as that increase seems unreasonably high to him.
12. He believes that the cleaner/gardener should submit emailed invoices in advance of all the standing order payments that they receive and that company members should be given advance details of all proposed expenditure/quotes above £50 and all resulting payment invoices similarly circulated. He would like more information about the services provided by Heath Electrical Services and why it became necessary to replace the previous light fixtures. He adds that there might be a case to seek recovery of the £75 for the gas safety check charges made by HML Hathaways in 2019 since to his knowledge there is no gas service in the common hallways.
13. The Respondent also notes that there has been a county court claim relating to allegedly outstanding service charges and states that therefore the subject-matter of this application "*continues to be subjudice of the Willesden County Court*" (his words).

### **Applicant's follow-up response**

14. In relation to the £600 per year being paid to an accountant, Mr Weisz states that the company has a legal obligation to file accounts regardless of being not for profit. He has checked this with a solicitor and an

accountant. He comments that if the Respondent can advise on an alternative accountant to do the work for less that would be helpful.

15. As regards the £1,500 that was paid to Ridgeway Refurbs, Mr Weisz does not recall having had any discussions about any planned refurbishment other than the discussions relating to the works originally proposed by the previous managing agents. The Ridgeway Refurbs works were carried out as the windows were in extremely poor condition and the glass could have fallen out of the frames at any moment with the potential for a catastrophic outcome. The wood frames needed immediate attention to save them, otherwise the Applicant would have had to replace all the window frames with brand new ones at a considerably higher cost. Mr Weisz has supplied the tribunal with a copy photograph. He adds that he called in 3 contractors to quote and went with the cheapest option. The chosen contractor has in his view done a good job and leaseholders now have windows which are safe and which will last for a number of years.
16. As regards the £90 paid to Woodside Locksmith, the latch on the front door was not functioning and the front door would not close, which meant that anyone could walk into the Building without a key. As regards the £85 annual professional subscriptions, in order to carry out the management of the Building correctly Mr Weisz needed to check that everything is done in accordance with the relevant rules and regulations. The Applicant joined the National Landlords Association for this purpose, and also because they offer discounted insurance policies for members, and this is what the subscription is for.
17. As regards the budgeted £325 increase in insurance premiums for 2021/22, it has been Mr Weisz's experience that insurance premiums are going up between 10-25% per annum. He adds that he will on renewal obtain alternative quotes to get the best price, and he invites the Respondent to offer any quotes to compare. As for the Respondent's request that company members should be given advance details of all proposed expenditure/quotes above £50, Mr Weisz does not think that it is practical or necessary to have to gain approval for expenditure above £50 and states that there is no legal basis for this request.
18. As to why it became necessary to replace the previous light fixtures, the old lighting did not have any emergency fittings which was in contravention with current regulations. This was pointed out after the Building was inspected for the fire risk assessment. As regards the £75 for the gas safety check charges made by HML Hathaways in 2019, Mr Weisz states that this is something which the Respondent can take up with HML Hathaways.
19. The Applicant has provided some limited information in respect of the county court claim, and this is referred to below.

## **The hearing**

20. At the hearing Mr Weisz was asked about the county court claim. The tribunal noted from the court papers that the claim seemed to relate to the service charge for (a) the September to December 2019 quarter and (b) the December 2019 to March 2020 quarter. Mr Weisz agreed that this was the case. On being asked about the result of that claim, Mr Weisz said that the claim had been dismissed, although he added that for certain reasons he had been unable to pursue the claim properly at the time.
21. The tribunal also noted that the service charge demands previously sent out by the Applicant were not compliant with relevant legislation, for example because they were not accompanied by a statement of leaseholders' rights and obligations. This point had been discussed at a telephone case management hearing on 26<sup>th</sup> October 2021 and the procedural judge had pointed out that this defect could be cured by the Applicant sending out fresh demands which were compliant with the legislation. Mr Weisz told the tribunal that he had now sent out compliant demands.
22. The tribunal asked Mr Weisz about attempts to explore mediation, and he said that the Respondent had declined mediation.
23. The tribunal then went through the service charge accounts and budget with Mr Weisz and asked him various questions about different items and categories of expenditure.

## **Tribunal's analysis and determination**

24. Based on the information before us, the county court claim relates to service charges allegedly payable by the Respondent in relation to the Property for the period 29<sup>th</sup> September 2019 to 24<sup>th</sup> March 2020 and that claim was dismissed. The doctrine of "res judicata" prevents a party from re-litigating any claim which has already been litigated and therefore this tribunal does not have jurisdiction to deal with the present application insofar as it relates to the period 29<sup>th</sup> September 2019 to 24<sup>th</sup> March 2020. As explained to Mr Weisz at the hearing, if the Applicant was unsatisfied at the time with the decision of the county court then the proper course of action would have been either to apply for that decision to be set aside or to apply for permission to appeal that decision.
25. However, the fact that a decision has been made in another forum (i.e. in the county court) on the payability of service charges by the Respondent for the period 29<sup>th</sup> September 2019 to 24<sup>th</sup> March 2020 does not prevent this tribunal from making a determination on the

payability by him of service charges levied in respect of a period **after** 24<sup>th</sup> March 2020.

26. In respect of the period after 24<sup>th</sup> March 2020, the Applicant has provided a statement of case, copy accounts for 2020/21 and a budget for 2021/22. He has also given written answers to objections raised by the Respondent in an email dated 7<sup>th</sup> December 2021. The Respondent himself has chosen in the main not to engage with the tribunal proceedings, save for making observations about the county court claim.
27. In relation to the objections contained in the Respondent's email dated 7<sup>th</sup> December 2021, we are satisfied on the basis of the information and evidence before us that the Applicant has successfully dealt with these objections. The Respondent has provided no evidence or expert opinion for his assertion that the accountant's fee did not need to be incurred, whereas Mr Weisz states (believably, in our view) that he has checked the position with a solicitor and with an accountant. Whilst there are some cases in which tax returns do not need to be filed, on the basis of the evidence before us we are satisfied that this is not one of them.
28. Mr Weisz's answer in relation to the work to the windows is persuasive, particularly in the absence of any evidence to back up the Respondent's assertion. We are also satisfied with his answers regarding the £90 paid to Woodside Locksmith and the £85 paid for annual professional subscriptions.
29. Likewise, there is no proper basis for doubting the reasonableness of the budgeting for higher building insurance costs, an additional sum that can be refunded in whole or in part at the appropriate time if the estimate turns out to be too pessimistic and insurance can in practice be obtained for a lower cost than the budgeted amount. We also agree with Mr Weisz that there is no legal obligation to consult on expenditure on works above £50 per leaseholder, provided that the expenditure is below £250 per leaseholder.
30. The other points made by Mr Weisz also seem sensible, and we are not persuaded by any of the Respondent's assertions. If the Respondent had chosen to put together a proper statement of case and/or chosen to participate in the hearing then it is possible that he would have assembled a stronger response to the Applicant's case. However, he has not done so and we can only use the evidence and information that is before us.
31. As noted above, the tribunal went through the accounts with Mr Weisz at the hearing. As discussed with Mr Weisz at the hearing, the accounts are not quite in the format that we would have expected, but we are conscious that Mr Weisz has been dealing with the management issues

by himself and without payment, and therefore in the absence of any specific objection based on genuine problems arising out of the method of accounting it would not be appropriate to disallow any expenditure simply on this basis.

32. As regards the non-compliant service charge demands, Mr Weisz told us at the hearing that he had now sent out compliant demands, and we accept his word on this point in the absence of any evidence to the contrary.
33. As to the question of whether the costs are all recoverable under the terms of the lease, no objection on this point has been raised by the Respondent and in relation to most items it is self-evident that they are recoverable under the lease as long as they meet the test of reasonableness under section 19 of the Landlord and Tenant Act 1985. One possible exception is the £85 annual professional subscription with the National Landlords Association. However, in the context of the modest nature of the annual subscription, the fact that Mr Weisz charges no management fee for his time and the fact that it is in the interests of the leaseholders as a whole that he receives this support, in our view this cost is covered either by the ability of the Applicant to recover *“the costs of and incidental to the performance of each and every covenant on the Lessor’s part”* (see clause 4(5)(b)) and/or by its ability to recover *“all fees charges and expenses payable to any solicitor accountant surveyor valuer or architect or other professional or competent adviser whom the Lessor may from time to time reasonably employ in connection with the management and/or maintenance of the Building”* (see clause 4(5)(f)). In addition, this modest professional subscription seems to have the added advantage of discounted insurance policies for members and therefore arguably also forms part of its obligation to insure under clause 5(7).
34. As a general point, Mr Weisz came across very well at the hearing. Whilst there are some technical areas on which he needs more information and/or support, overall he seems – on the basis of the evidence before us – to be doing a very good job in the circumstances. He is also spending a considerable amount of his own time in managing the Building – without payment – and is also personally carrying out work such as cleaning and gardening, again without payment. We do, though, have a concern that all management issues seem to rest on his shoulders, and it would be better if there was a way to share the load.
35. We are satisfied on the basis of the information before us that the actual service charges over which we have jurisdiction were reasonably incurred and that all services or works to which they relate were of a reasonable standard. In relation to the estimated service charges for 2020/21, having considered the service charge budget and discussed it with Mr Weisz, we are satisfied on the basis of the information before us that these are reasonable in amount.



36. In conclusion, therefore:-

- this tribunal has no jurisdiction in respect of the service charges which were the subject of the county court claim, namely those for the period 29<sup>th</sup> September 2019 to 24<sup>th</sup> March 2020;
- the service charges demanded in respect of the period 25<sup>th</sup> March 2020 to 24<sup>th</sup> March 2021 are payable by the Respondent in full; and
- the estimated service charges demanded in respect of the period 25<sup>th</sup> March 2021 to 24<sup>th</sup> March 2022 are payable by the Respondent in full.

### **Cost applications**

37. There have been no cost applications.

**Name:** Judge P Korn

**Date:** 9<sup>th</sup> February 2022

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

## **APPENDIX**

### **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  
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- (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.