



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

**IN THE COUNTY COURT at
Wandsworth sitting at 10 Alfred
Place, London WC1E 7LR**

Tribunal reference : LON/00AN/LSC/2021/ 0302 – Flat
1
LON/00AN/LSC/2021/0303 – Flat
2
LON/00AN/LSC/2021/0309 – Flat
3
LON/00AN/LSC/2021/0311 – Flat 4

Court claim numbers : H5QZ07C5 – Flat 1
H5QZ06C6 – Flat 2
H5QZ05C4 – Flat 3
H5QZ01C2 – Flat 4

Property : 39A – 41 Goldhawk Road, London
W12 8QP

Applicant/Claimant : Everidge Limited

Representative : Ms Roznowska, managing agent

**Respondent/
Defendants** : Penelope Blake – Flat 1
Emilsen Roman – Flat 2
Lucinda Hawksley – Flat 3
Camilla Broadbent – Flat 4

Representative : Mr H Webb, counsel (direct access)

Tribunal members : Judge Tagliavini and Ms S Phillips
MRICS

In the county court : Judge Tagliavini

Date of hearing : 14 January 2022
Date of decision : 20 January 2022

DECISION

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

- (i) The tribunal finds that the annual service charges for the year ending March 2021 have not been properly demanded and are not payable
- (ii) Notwithstanding the tribunal's finding that there is no provision for the payment of the landlord's legal cost, the tribunal does (if required) make an order under section 20C of the Landlord and Tenant Act 198

Summary of the decisions made by the County Court

- (iii) No order is made on the claims for arrears of service charges (including major works) for the service charge years ending March 2019 and March 2020.
- (iv) The claim for arrears of service charges for the year ended March 2021 is dismissed.
- (v) No order for costs

The proceedings

1. Proceedings were originally issued against the respondent on 12 April 2021 in the County Court under claim numbers:

H5QZ07C5 – Flat 1 claiming £15,812.14 Service charges, costs, and interest

H5QZ06C6 – Flat 2 claiming £12,610.92 service charges, costs, and interest

H5QZ05C4 – Flat 3 claiming £6,818.02 service charges, costs, and interest

H5QZo1C2 – Flat 4 claiming £12,661.76 service charges, costs, and interest

2. The respondents filed a Defence dated 5 May 2021 in response to which the applicant filed disputing the liability the whole amounts claimed and referred to an earlier settlement reached between the parties. The proceedings were then transferred to this tribunal by the order of District Judge Jarzabkowski dated 20 July 2021, the claims for Flats 1 2 and 4 having been set down in the Small Claims track and Flat 2 allocated to the Small Claims Tract (if necessary) by a deployment judge of the First-tier tribunal.
3. Directions were issued, and the matter eventually came to hearing in January 2022.

The background

4. The subject property comprises a block containing 4 residential units with 2 residential units on the ground and basement floors.
5. The applicant neither provided a fully pleaded Particulars of Claim in the count court or a fully itemised Statement of Case in respect of the tribunal proceedings for any or all the 4 claims. Further, no witness statements of fact in support of the claim were provided. The only detailed provided was the claimant asserted that ‘There are service charges carried over from 2019 to March 2021, the amount of the service charges owed by each lessee and the costs said to have incurred in contemplation of forfeiture and the court /representative fees for issuing the claim.
6. Similarly, none of the respondents in the tribunal made a detailed Statement particularising the issues on which they sought to rely and no witness statements of fact in support from any of the respondents to the tribunal.
7. The respondents sought largely to rely on a Skeleton Argument dated 13 January 2022 which itemised the issues relied upon by them. These were:
 - (i) The 4 claims failed to specify the particulars of the alleged service charge arrears or the years to which they related.
 - (ii) The sums claimed are incorrectly calculated as items appear under Schedule 1 that should appear under Schedule 2, having been incorrectly apportioned by reference to the percentage payable under each Schedule.

- (iii) Any sums alleged to be due for the service charges ending 24 March 2019; 2020 and 2021 are the subject of a Consent Order dated 13 February 2020 under tribunal application *ref: LON/00AN/LSC/2019/0442*, concerning the same parties.* This Order was said to be ‘in full and final settlement’ of the service charges (including major works) said to owed for the service charge years ending 2019 and 2020. Therefore, the tribunal does not have jurisdiction over these issues (‘the preliminary issue’).

**In LON/00AN/LSC/2019/0442 the leaseholders of Flat 2 appeared as Barry Wills & Emilsen Roman. However, the county court claim LON/00AN/LSC/0303 named only Emilsen Roman as the leaseholder and no claim was made against Barry Wills in respect of Flat 2 and demands for payment appear in the name of Emilsen Roman only. Although Mr Webb included the name of Barry Wills in his skeleton argument the claim against the lessee of Flat 2 is made against Emilsen Roman and therefore this decision and any order of the county court reflects this.*

The hearing

8. The applicant freeholder Everidge Limited was represented by Ms Roznowska of Safe Property Management, who was accompanied by Mr David Parry, director of the applicant landlord company. The respondent leaseholders who had been represented themselves in the county court proceedings were represented by Mr Henry Webb of counsel (direct access).
9. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.
10. The respondents each holds a long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The preliminary issue

11. The issue of whether the applicant could now seek to claim arrears of service charges for an earlier period than the service charge year beginning March 2020 appeared to come as a complete surprise to the applicant and an issue that it had not properly prepared for, although Mr David Parry had himself signed the Settlement Agreement of 13 February 2020 which led to the tribunal’s Consent Order of the same date. Ms Roznowska asserted that the Settlement Agreement had dealt only with payments for major works and not any other annual service

charges. Ms Roznowska was able to provide the tribunal with a Statement of revised arrears for the annual services said to be due from 25 March 2020 onwards. These sums were:

Flat 1:	£661.44
Flat 2:	£1,323.22
Flat 3:	£21.44
Flat 4:	£1,328.89

12. Mr Webb asserted that the Settlement Agreement/ Consent Order dealt with all arrears arising in the earlier application although did not provide a copy of that application to this tribunal in support of his argument but relied on his personal knowledge, having also represented the respondent lessees in that application. However, Ms Roznowska appeared to concede that the earlier proceedings had sought payment of both annual service charges as well as charges for major works.
13. The tribunal determines that arrears of service charges arising in application *ref: LON/00AN/LSC/2019/04* dated 13 November 2019, are the subject of a Settlement Agreement dated 13 February 2020. This application was at the request of the parties, dealt with by way of the tribunal's Consent Order under rule 35 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 disposing of those proceedings and the application of the applicant withdrawn. Therefore, the tribunal determines that those parts of the claim relation to service charges (including charges for major works) are not within the jurisdiction of the tribunal.
14. It appeared to the tribunal that the terms of the Settlement Agreement have not been fully complied with by the lessees, as the payments promised to be paid on three separate dates had not been paid in full. This left arrears of payments for major works. Mr Webb asserted that the final payments had been withheld in part as the major works were not completed either at all or had been carried out to an unsatisfactory standard. In support of this argument Mr Webb referred to the report of Mr Snell of Woodward Chartered Surveyors, which did not appear in the hearing bundle and had been sent to the tribunal separately. Mr Webb also submitted that the lessees could not waive their right to rely on their rights under the provisions of the Landlord and Tenant Act 1985 despite the Consent Order.
15. On its face the Consent Order specified only, that the 2nd of the three payments was due when 50% of the works had been 50% completed and their standard certified by the (landlord's) surveyor they had been carried out to a reasonable standard. The 3rd payment was due on completion of all major works and final figures certified by the (landlord's surveyor). The tribunal was informed by Ms Roznowska that the major works had been certified as completed to a reasonable

standard by the landlord's surveyor and that the works had come in on budget. However, a requirement for further electrical works had been discovered which would be subject to a new section 20 consultation procedure and major works project.

16. The tribunal is of the view that neither party has fully appreciated the effect of the Consent Order on the service charges due from the lessees in the period which it covers, or how it is to be implemented, if compliance with its terms have not been met. In the absence of a properly pleaded or prepared claim/application by either party on this issue, with evidence in support, witness statements and oral evidence, the tribunal declines jurisdiction over that part of the claim for service charge arrears in respect of major works and service charges ending with the period up to an including 24 March 2020 until such time as a properly made claim or application is made in respect of it.
17. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.
18. The respondents each holds a long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

19. The respondent identified the following issues with respect the arrears of service charges claimed by the applicant:

2020/2021

- (i) Service charges have not been particularised or properly calculated in accordance with the lease(s) and therefore were not due or payable.
- (ii) Demands for interim charges have been made although actual costs have now been determined and certificated.
- (iii) Payments were made by the lessees in the service charge year 2019/2020 which were otherwise subject to the Consent Order and were not payable. Therefore, they should be credited to each lessee's service charge account.
- (iv) On the basis of (ii) above each lessee is in credit and therefore no sums are due, and the county court claims should be dismissed.
- (v) There is no provision in the lease(s) for the recovery of the landlord's legal costs.

20. As neither of the parties had provided witness statements, the oral evidence and submissions were heard from Ms Roznowska with Mr Parry interjecting with statements in support and clarification throughout the hearing, and by way of submissions from Mr Webb. This led to disjointed hearing. Nevertheless, the tribunal is satisfied that the parties were provided with sufficient opportunity to present their evidence and address all issues raised.
21. As referred to above, Ms Roznowska was very helpful ably to produce at short notice a Schedule which set out in respect of each flat/lessee the major works sum demanded and paid; the annual service charges demanded and paid for the service charge year ending March 2020 And the service charges demanded and paid for the service charge year ended March 2021.
22. From the Certificate of Service Charge Expenditure for the year ended 24 March 2021 provided by the applicant, the tribunal were able to see that in calculating service charges, the applicant split these between Schedule 1 items comprising building insurance, terrorism insurance and general repairs and maintenance. Schedule 2 comprised of internal repairs and maintenance, health and safety, accountancy fees, management fees, legal and professional fees, and administration charges. Ms Roznowska asserted that the lessees were able to 'work out' their percentage of service charges payable from the documents provided to them

The tribunal's decisions and reasons

23. The tribunal finds:
 - (i) For the reasons stated above, arrears of payment for major works and service charges for the year ending March 202 are subject to the Consent Order date 13 February 2020 in application *ref:LON/00AN/L~SC/2019/0442* and not within the jurisdiction of the court/ tribunal in this claim/application.
 - (ii) Payments made by the lessees in response to demands for service charges in respect of the year ended March 2020 should appear as credits in the service charge year ending March 2021. These payments are:

Flat 1: £1,698.40

Flat 2: £2,676.18

Flat 3: £1,698.40

Flat 4: £2,676.18

24. The tribunal finds that all parties appear to have misunderstood or have not fully appreciated the effect of the Settlement Agreement/Consent Order on the claim for service charges for the years ending March 2019 and 2020.
25. In respect of individual items of service charges and demands that are disputed by the respondents, the tribunal finds:
- (iii) Until demands for correctly calculated and particularised service charges for the year ending March 2021 based on the actual costs are demanded, no sums are found to be payable. Further, the appropriate costs should be properly apportioned between the residential and commercial units in accordance with the lease(s) and the services provided to both types of units.
 - (iv) The tribunal finds the key cutting costs of £15 are reasonable and payable as they fall under ‘maintenance.
 - (v) Managing agent fees for the service charge ended March 2021 should be reduced by £150 per lessee to reflect the sub-standard level of management provided to the lessees in this year.
 - (vi) In the absence of the production of the building insurance schedule, notwithstanding the premises from part of the landlord’s portfolio, the tribunal is unable to determine if these costs are reasonable and payable.
 - (vii) The tribunal dismisses the applicant’s arguments that the lease(s) provide for the recovery of costs. The tribunal finds there is no provision in the lease permitted the landlord to recover legal costs.
26. In conclusion the tribunal finds that the annual service charges for the year ending March 2021 have not been properly demanded and are not payable, and that each of the lessees is in credit due to the applicant’s demand for service charges arising in the service charge year ended 2020 which have been compromised by the parties in their Settlement Agreement.

Section 20C application

27. Notwithstanding the tribunal's finding that there is no provision for the payment of the landlord's legal cost, the tribunal does (if required) make an order under section 20C of the Landlord and Tenant Act 1985.

County court issues

28. After the proceedings were sent to the tribunal offices, the tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.
29. No order is made on the claims for arrears of service charges (including major works) for the service charge years ending March 2019 and March 2020.
30. The claim for arrears of service charges for the year ended March 2021 is dismissed.
31. No order for costs.

Name: Judge Tagliavini

Date: 20 January 2022

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.
4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.