



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

**Case reference** : **LON/00BK/LSC/2022/0168**

**HMCTS code (paper, video, audio)** : **Face to Face**

**Property** : **Flat A, 141 Randolph Avenue, W9 1DN**

**Applicant** : **Goodwyn Realty Limited**

**Representative** : **Mr M Phillips ( In house lawyer)**

**Respondent** : **Mr Adrian Alves**

**Representative** : **In Person**

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

**Tribunal members** : **Mr A Harris LLM FRICS FCI Arb  
Mr S Wheeler MCIEH CEnvH**

**Venue** : **10;00 on Tuesday, 1 November 2022 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **3 November 2022**

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**DECISION**

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

The case was heard at a face-to-face hearing attended by both parties.

## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £7307.00 is payable by the Respondent in respect of the service charges for the years 2019, 2020, 2021 as below

Y/E	Block service charge	Flat A %	Flat A amount
28/09/2019	£ 12,516.00	25%	£ 3,129.00
28/09/2020	£ 9,050.00	25%	£ 2,262.50
28/09/2021	£ 7,662.00	25%	£ 1,915.50
			£ 7,307.00

- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court.

## **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 administration charges payable by the Respondent in respect of the service charge years .
2. Proceedings were originally issued in the County Court Business Centre under claim no. H4QZ9R4N seeking payment of arrears amounting to £6705.33 inclusive of costs. The claim was transferred to this tribunal, by order of Deputy District Judge Redpath-Stevens on 17 May 2022 to determine the reasonableness and payability of the service charge for the years in question.

## **The hearing**

3. The Applicant was represented by Mr Mark Phillips (an in-house lawyer) at the hearing and the Respondent appeared in person.
4. At 17:32 on 31 October 2022 the Applicant emailed the tribunal with additional documents. The Respondent objected to their admission.

The tribunal considered that the new material came far too late in the process and did not admit it.

### **The background**

5. The property which is the subject of this application is a four storey semi-detached house converted into five flats.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondent holds a long lease of the property 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. The Respondents service charge percentage is 25%.
8. The tribunal issued directions on 25 May 2022 which were varied on 8 August 2022. In a ruling dated 30 August 2022 the tribunal stated it was not prepared to order the Respondent to file any further statement of case nor allow amendment of the statement of case already made. The Respondents challenges to the service charges will be limited to the matters set out.

### **The issues**

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and reasonableness of service charges for the 12 month period ending 28 September 2019
  - (ii) The payability and reasonableness of service charges for the 12 month period ending 28 September 2020
  - (iii) The payability and reasonableness of service charges for the 12 month period ending 28 September 2021
  - (iv) The payability and reasonableness of administration charges.
  - (v) The Respondent disputed the claimed amounts and stated that he had paid all the service charges which were due. The tribunal explained these were matters for the County Court once the tribunal had determined the correct level of service charge.

10. 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 year ending 28 September 2019 amount claimed £12,516**

11. The Applicant has submitted audited accounts for the year ending 28 September 2019 showing expenditure in the sum of £12,516. A detailed schedule of the invoices making of these totals has also been provided but copies of the invoices have not. In responses to questions from the tribunal relating to repairs and maintenance expenditure the Applicant called Mr Jason Popperwell, the property manager responsible for the building. There are four invoices for Morgan Asphalte Co Ltd for the same set of works. An invoice dated 6 March 2019 for £547.20 is a 20% deposit for roofing works. There are then three invoices dated 17 September 2019 for £756, £582 and £2188.80. The largest sum is for the main works, and the two smaller items are for additional works. Mr Popperwell confirmed that a section 20 consultation process had been carried out prior to the works.
12. The Respondent has not challenged any of the items as being unreasonable or not payable and confirmed to the tribunal at the hearing that none of the amounts were challenged.

**The tribunal's decision**

13. The tribunal determines that the amount payable in respect of service charges for the year ended 28 September 2019 is £12,516.

Item		
Accountants fee	£	388
Buildings Insurance	£	2,852
Cleaning Caretaking	£	724
Electricity	£	96
Emergency Lighting testing	£	151
Entryphone maintenance	£	556
Fire risk assessment	£	240
Gardening services	£	193
Repairs and general maintenance	£	5,043
Health and safety risk assessment	£	240
Management fees	£	1,673
Reinstatement valuation	£	360
		£ 12,516

**Reasons for the tribunal's decision**

14. The items claim all fall within the service charge provisions of the lease and are not disputed by the Respondent.

**Service charge for the year ending 28 September 2020 amount claimed £13,250**

15. As for the previous year the audited accounts and schedule of invoices has been provided. The amount claimed includes £4200 for a building condition report. No copy invoice or copy of the report has been provided to the tribunal.
16. The Respondent disputes liability for this amount as leaseholders have not agreed to it.
17. The Applicant states the amount has been credited back in the following year. In response to questions from the tribunal it was confirmed the amounts have been credited back in the succeeding year as the works were not yet going ahead. The report was commissioned in response to various questions from leaseholders who contributed to the preparation of the report. As the amount is credited back to the service charge account the tribunal determines that this amount is not payable in this service charge year.

**The tribunal's decision**

18. The tribunal determines that the amount payable for the year ending 28 September 2020 is ££9050.

Item		
Accountants fee	£ 568	
Buildings Insurance	£ 2,838	
Cleaning Caretaking	£ 720	
Electricity	£ 66	
Emergency Lighting testing	£ 150	
Entryphone maintenance	£ 570	
Fire risk assessment	£ 240	
Gardening services	£ 192	
Repairs and general maintenance	£ 1,804	
Health and safety risk assessment	£ 240	
Management fees	£ 1,590	
Reinstatement valuation	£ -	
Emergency Call out service	£ 30	
Client Money Protection	£ 24	
Postage costs	£ 18	
Building condition report	£ -	
		£ 9,050

### **Reasons for the tribunal's decision**

19. With the exception of the building condition report which is discussed above, none of the other items are challenged and the tribunal therefore determines that they are reasonable and payable.

### **Service charge for the year ending 28 September 2021 amount claimed £13,250**

20. As with the previous years the claim is supported by audited accounts and a schedule of invoices. The audited accounts show a credit of £4200 as referred to in the previous year in the income receivable section and a further credit of £300 in the expenditure. The witnesses were unable to explain this treatment. However as both parties agreed that the building condition report should be left out of account for this service charge year, the tribunal leaves it out of account.
21. The respondent has presented no challenge to the remainder of the items in this year.

### **The tribunal's decision**

22. The tribunal determines that the service charge payable for the year ending 28 September 2021 is £7662.

Item		
Accountants fee	£ 595	
Buildings Insurance	£ 3,158	
Cleaning Caretaking	£ 660	
Electricity	£ 81	
Emergency Lighting testing	£ 150	
Entryphone maintenance	£ 577	
Fire risk assessment	£ 240	
Gardening services	£ 317	
Repairs and general maintenance	£ 7	
Health and safety risk assessment	£ 240	
Management fees	£ 1,590	
Emergency Call out service	£ 30	
Client Money Protection	£ 12	
Postage costs	£ 5	
Building condition report	£ -	
		£ 7,662

## **Administration charges and costs**

23. The Applicant has included in the bundle six invoices for costs and administration fees.

Date	Charge type	Amount	
31/08/2021	Arrears Admin Charge	£ 50.00	
14/09/2021	Arrears Admin Charge	£ 50.00	
07/11/2021	letter before Action	£ 90.00	
26/06/2022	Admin costs for FTT hearing fee	£ 200.00	
15/11/2021	Issue of proceedings fee	£ 267.00	
15/11/2021	Court fee	<u>£ 455.00</u>	
			£1,112.00

24. The tribunal stated at the outset that it had no jurisdiction over court costs and these were a matter for the County Court.
25. In respect of administration charges these fall under schedule 11 of the Commonhold and Leasehold Reform Act 2002. Section 1 (1) states that an administration charge is an amount payable by the tenant of a dwelling as part of or in addition to the rent.
26. The lease in this case allows the landlord to forfeit the lease if a rent or service charge payment is more than 21 days late. There is also a provision at paragraph 4 of the 5<sup>th</sup> schedule for any costs in contemplation of any action under section 146 of the Law of Property Act 1925 to be payable. There is no provision for interest on a late payment.
27. Insofar as any of the items claimed are administration costs rather than litigation costs, the tribunal determines they are payable if the court finds that there are arrears of service charge payments giving rise to a claim for forfeiture.
28. There is no application from the Respondent under section 20C for an order that the costs of the proceeding should not be added to the service charge.

## **The next steps**

29. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court.

**Name:** A Harris

**Date:** 3 November 2022

### **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).