FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LSC/2016/0375**
Property	**:**	**37A Park Mansions Vivian Avenue London NW4 3UU**
Applicant	**:**	**Barbara E Goodall**
Representative	**:**	**Martin McDonnell**
Respondent	**:**	**Roselion Limited**
Representative	**:**	**John Fowler of Stock Page Stock Managing Agents**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Carr** **Mrs Redmond MRICS**
Date and venue of hearing	**:**	**11th January 2017** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**11th January 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £ 1090.44 is payable by the Applicant in respect of the service charges for the years 2015 -16 and 2016 - 17

(2) This figure comprises management charges of £264.00 for each year, £ 207.14 insurance charges for 2015 – 16 and £220 for 2016-17, and repair charges of £135.30

(3) The tribunal makes the determinations as set out under the various headings in this Decision

The application

1. The Applicant 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 2015/16 and 2016/17.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant did not appear but was represented by Mr McDonnell at the hearing and the Respondent was represented by Mr Fowler of Stock Page Stock. Stock Page Stock are managing agents, but not employed by the Respondent.

The background

4. The property which is the subject of this application is a 2nd floor four bedroom flat built over commercial premises in a block which originally comprised 2 residential flats and a shop. During their period of ownership of the freehold the British Red Cross Society (the previous freeholder to the Respondent) extended the ground floor commercial premises to include office and lecture room areas. The Respondent, Roselion, acquired the freehold in 2014 and converted the ground floor extension into seven flats.

5. 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.

6. The Applicant 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.

7. The specific provisions of the lease, which will be referred to below where relevant, have not been varied since the extension of the property. In particular the service charge proportions are set out in the lease as 33%, meaning that the shop and the two residential flats share the service charge burden almost equally. However Glovers Solicitors, solicitors for the British Red Cross Society wrote to the Applicant on 20th April 1989 to advise that service charges would be calculated on the building as it originally was and that the British Red Cross Society would bear all service charges and outgoings relating to their ground and basement extension. The Respondent informed the Tribunal that following its acquisition of the freehold it intended to continue to apportionment of service charges on that basis.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for 2015- 16 and 2016 - 17 relating to (a) management fees and (b) insurance charges

   (ii) In addition, and in relation to the service charges demanded for 2015 – 16 only, the payability and/or reasonableness of maintenance charges relating to call out charge and repair works to a rainwater pipe

9. The tribunal faced certain difficulties in relation to these issues. The Applicant had failed to provide a statement and schedule as per the directions, and provided no evidence of alternative costs for management fees and insurance. The Respondent did not appear at the hearing (although its representative did appear) and therefore no evidence was provided from the Respondent and there was no-one available from the Respondent to answer the tribunal's questions about the scope of the insurance cover, the management contract or other issues raised by the Applicant.

10. Having heard some limited evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Management fees

11. Management fees of £264.00 were charged in 2015/16 and in 2016/17.

12. The Respondent referred to the relevant clause of the lease (Paragraph 3 of the Fifth Schedule) to demonstrate that management fees were payable by the Applicant.

13. The Applicant's representative argued that as the British Red Cross Society had not charged management fees that an estoppel arose and no management fees were payable.

14. In the alternative he argued that in his experience very few lessees paid management charges, and that very limited services were provided by the managing agents and not to a good standard. In particular the Applicant's representative informed the tribunal that the original service charge demand sent by the Managing Agents did not include the statutorily required information, a defect not put right until it was pointed out to them. He also said he had never been aware of property inspections.

15. The Respondent's representative did not have a copy of the contract to provide management services but indicated to the tribunal that the charges covered the normal range of services provided to lessees, such as arranging insurance, running an accounting system, administering service charges, quarterly visits etc. He informed the tribunal that the Managing Agents were experienced particularly in the management of mixed commercial/residential blocks, but was unable to explain why they had made such a basic error when they issued the service charge demand.

16. The Respondent's representative also pointed out that the charge was on the low side for managing residential properties, particularly considering the size of the subject property, and the small size of the block. The Applicant was unable to provide any evidence of what the management fees would be for a comparable flat in a comparable block in Hendon.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of management fees is £264 for each year in dispute.

Reasons for the tribunal's decision

18. The Applicant provided no evidence that the charges were unreasonable. The Applicant claimed an estoppel but provided no argument or evidence in support. Evidence about poor quality services was also not provided. The Tribunal considered that the charge was on the lower end of the range for such properties.

Insurance charges

19. The Respondent has charged £490.92 for insurance in 2015-16 and £528.60 for insurance in 2016- 17.

20. The Respondent referred to the lease to demonstrate that the lessees were obliged to contribute to insurance costs.

21. The Applicant's representative argues that the increase in insurance charges since Roselion acquired the freehold are unreasonable and cannot be justified. In particular he pointed out that the insurance covered rent loss, and it was unclear whether or not the insurance premium covered the new and relative expensive commercial fittings to the shop. He was not able to provide evidence to suggest what a reasonable premium for the property would be. Instead he asked the tribunal to calculate reasonableness on the basis of a 5% annual increase.

22. The Applicant also objected to the apportionment of the premium following the extension of the demise.

23. The Respondent's representative explained that the freeholder had undertaken an exercise to calculate the fairest way to apportion the insurance costs. It appointed an independent surveyor who held a RICS qualification to recalculate the apportionment. The surveyor concluded that following the construction of the rear extension, the service charge apportionment should be based on a proportion of floor area within each demise. The results of the exercise were that following the extension of the demise the Applicant's share of the insurance premium was 23.7%.

24. The Applicant's representative produced some figures of floor sizes that differed from the ones in the table produced by the Respondent's expert. He also produced information to show that in the second year of the insurance charges loss of rent had been covered.

The tribunal's decision

25. The tribunal determines that the amount payable in respect of is £427.14. This sum is made up of one tenth of the total premium charged in 2015 -16 and one tenth of the total premium minus of deduction of £30.40 for rental loss cover. .

Reasons for the tribunal's decision

26. The tribunal accepts, in the absence of evidence to the contrary, that the insurance premium charged was reasonable minus a deduction for cover of rental loss in the second year. The tribunal accepts the evidence of the Respondent that deduction should be around £30.

27. The tribunal was not provided with reliable evidence in connection with the apportionment of the premium. There was no evidence as to what the independent surveyor had done or measured in order to reach his figures. The figures provided by the Applicant excluded balcony areas. The tribunal could not make sense of the figures provided. Whilst the Respondent did some recalculations of the figures there was still uncertainty about their accuracy. The percentages he calculated were 17.5% for the 2nd floor flat, in comparison with the 23.7% originally charged.

28. The tribunal therefore decided that for the two years in question, in the absence of good evidence as to floor areas, it should divide the premium on the basis of the number of units, following the equal proportions envisaged in the lease. It acknowledges that this is a broad brush approach but it was left with no other alternative.

29. The parties both agreed that once accurate figures were provided then a reasonable apportionment would be on the basis of square footage. However the tribunal was not prepared to guess those figures. It may be that in the future this may be a more reasonable way to apportion premiums but for the two years in question the tribunal was satisfied that the charges by the Respondent were not fair or reasonable.

Repair costs

30. The Applicant has been charged two sums in connection with work carried out to a problematic rain water down pipe located at the side of the shop.

31. The Applicant argues that the first of these charges, £56.67, in connection with a call out charge and some basic repair work to the pipe, is unreasonable because there was no need to call a contractor from south London to do the work.

32. He further objects to that charge and the subsequent charge by D and T Services of £216.67 (the Applicant's share) for a proper repair to the pipe as he argues that there is a high probability that the damage/blockage was caused by the works going on at the demise at the time.

33. The Respondent's representative states that the repairs fall squarely within the obligations under the lease and therefore the charges are payable.

34. The Applicant produced no evidence to suggest that the actual charges were unreasonable.

The decision of the tribunal

35. The tribunal determines that 50% of the charges are payable by the Applicant.

Reasons for the tribunal's decision

36. Neither party produced evidence to substantiate their position. However the invoice from D and T Service suggested that there was a misplaced joint at 80 degree bend at the base of the pipe. No problems had been experienced by the Applicants in the past and therefore there is a probability, that should at least have been investigated, that the works to the premise had caused the damage.

Application under s.20C and refund of fees

37. The parties are asked to make written representations within seven days of the receipt of this decision in connection with the s.20C application and to refer in those representations to any relevant clause of the lease.

Name: Judge Carr **Date:** 11th January 2017

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).