FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/LSC/2019/0102**
Property	**:**	**32 Oban Street, London E14 0HZ**
Applicant	**:**	**Poplar HARCA**
Representative	**:**	**Capsticks Solicitors LLP**
Respondent	**:**	**Mr Lajos Attila Konya**
Representative	**:**	
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**P M J Casey MRICS** **C Gowman MCIEH**
Date and venue of Hearing	**:**	**25 July 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**28 August 2019**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £19,325.64 is payable by the respondent in respect of the service charges for major works invoiced on 22 November 2017.

(2) 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 respondent in respect of the service charge invoice dated 22 November 2017.

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

The hearing

3. The applicant was represented by James Fieldsend of counsel at the hearing and the respondent appeared in person.

4. The tribunal issued directions for the conduct of the application on 16 April 2019 which made provision for an oral hearing on 25 July 2019. The applicant complied with its obligation to disclose various documents to the respondent and those documents and the application form comprised its statement. The respondent failed to comply with the direction to respond to the statement of Case by 14 May 2019 and on 21 June the tribunal wrote to him asking him to write to the tribunal to explain why this was so and what he proposed to do to remedy the failure to comply. The letter concluded by giving notice that any future failure to comply with the directions could lead to his being disbarred from taking any further part in the proceedings pursuant to Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. No reply had been received by 26 June 2019 when Capsticks wrote to the tribunal asking that the respondent be debarred from taking part in the proceedings. The respondent wrote to the tribunal a letter received on 28 June in which he referred to difficult personal circumstances, his inability to afford legal advice and to the fact that the first he knew of the landlord's claim was when he was invoiced ten months after he bought the flat and six years after the works were done. The tribunal judge deciding the debarment request considered this letter but decided, on 1st July 2019, that the respondent be debarred from adducing evidence at the hearing and, unless the tribunal decides otherwise, be limited to making representations on the material filed by

the applicant and on his own letter. Though advised he could, the respondent did not apply in writing to have this bar lifted.

5. The respondent had previously brought County Court proceedings regarding the unpaid service charge naming the applicant and his predecessor in title as defendants but he subsequently discontinued that claim.

The background

6. The property which is the subject of this application is a six bedroomed purpose built ground and first floor flat, No 32, in a block known as 1-102 Oban Street, London E14 0HZ.

7. 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.

8. 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 will be referred to below, where appropriate.

The issues

9. The sole issue for determination by the tribunal is the payability and reasonableness of service charges in respect of major works of repair and redecoration to the whole block which were invoiced on 22 November 2017 in the sum of £19,325.64.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made its determination on the issue as follows.

Submissions and Evidence

11. Mr Fieldsend, of counsel, appeared for the applicant and provided the tribunal and the respondent with a helpful skeleton argument which he took us through. Poplar HARCA in its statement of case (the application form) had referred to the lease which is dated 17 July and made between (1) the Mayor and burgesses of the London Borough of Tower Hamlets as lessor and (2) Jacqueline McPherson as lessee and granted a term of 125 years from 3 April 1989 of the flat. The lease was made under the "right to buy" provisions of the Housing Act 1985. By Clause 5 of the lease the applicant (as successor in title to the original lessee) covenants to (a) maintain and keep the Building (defined as the block known as 1-102 Oban Street etc) and the common parts … in good

and substantial repair and condition; (b) paint, varnish and decorate those parts of the Building and the commonparts … which are usually painted varnished and decorated; (c) … . In fulfilment of this obligation and having identified at the block various defects and the need for remedial works the applicant undertook a programme of repair and decoration works to the block. The estimated cost of these works was such that they were "qualifying works" for the purposes of S20 of the Act and hence there was a requirement to carry out a statutory consultation with the lessees of the block. A Notice of Intention to carryout works was given to lessees on 9 May 2011 followed on 17 June 2011 by a statement of estimates. Practical completion of the works was on 26 March 2013. Invoicing of the lessees was however delayed and to protect itself from the provision of S20B of the Act the landlord served notices on 4 July 2013 and 31 July 2015 advising lessees that costs of nearly £3m had been incurred by the landlord in respect of the whole scheme (Aberfeldy Estate) and that invoices would follow.

12. The statement of case referred to Clause 4(4) of the lease being the lessees covenant to pay a service charge at the time and in the manner provided for in the Fifth Schedule to the lease which is relied on as establishing the lessee's liability.

13. The respondent was not the owner of the flat at the time any of the notices referred to above were served nor when the works were carried out; he became the registered proprietor on 20 March 2017. In the statement of case it is speculated that the respondent's failure to pay relates to that conveyancing transaction and information supplied or not at the time by the vendor Kerry Michelle Wermerling Roast and/or the landlord who had provided a pre-sales pack of information including service charges outstanding at the time but not the major works' cost which had not then be invoiced.

14. In addition to the statement of case the applicant's bundle included a witness statement from Matthew Mitchell, a Home Ownership Officer employed by the applicant. Mr Mitchell attended the hearing and spoke to his statement which enclosed the lease, the various notices, calculations of the amount due (including the apportionment of the block costs to the flat on a pro rata area basis) and the invoice. He also said that on 5 December 2016 the then owner's solicitors, Cunningtons, wrote to the applicant requesting the "sales pack" which after payment of the fee of £180 was sent on 22 December 2016 with further correspondence in January 2017. On 31 July 2017 the applicant sent Cunningtons a further letter saying an invoice would shortly be issued for £19,411.88 and that "The vendors were aware of the works that have taken place and that an invoice for the works was due".

15. We reminded Mr Konya that he had been debarred from giving evidence and that he was limited to making representations on the material provided by his landlord and his own letter but that he could

ask questions of Mr Mitchell. He asked him why nothing was said of the bill in the sales pack and Mr Mitchell confirmed it was because there was at the time no outstanding invoice. Mr Konya then asked why the delay of 4 ½ years between practical completion of the works and issue of the invoice. Mr Mitchell said that the Quantity Surveyor engaged on the project had unfortunately died before final bills of quantities were agreed with the contractor and the final total cost of the works determined. A new quantity surveyor was appointed but had to go over all the costs of the whole project before he could sign off on the job and this had taken considerable time. The respondent referred to his letter and his difficult personal circumstances and lack of ability to afford legal representation. He would not have bought the flat had he known of the impending bill which he simply could not afford to pay.

16. We did ask Mr Fieldsend if the invoice was compliant with the provisions of the Fifth Schedule to the lease although this was not raised by the respondent the lease itself was in evidence. He said he could not say with certainty it did but as any defect, if such existed, would be readily curable without affecting liability or quantum and on Mr Mitchell assuring us no interest would be charged on the debt we pursued the issue no further.

The tribunal's decision

17. There is no challenge to the payability of the service charge demanded in terms of the provisions of the lease, the service of the S20 and S20B notices nor to the quality and cost of the works undertaken. It is not the role of the tribunal to make a case for a party who has failed to make the case or even raise the issues itself. The tribunal's jurisdiction under S27A of the Act is limited and on the evidence and submissions before us we can do no other than determine that the sum of £19,325.64 as a service charge is reasonable and reasonably incurred and owed by the respondent to the applicant under the terms of his lease. We have no jurisdiction to consider whether or not the respondent was misled by anyone nor to consider if those advising him or providing information on which he relied were negligent. The Tribunal Judge who made the debarring order of 1st July 2019 did at paragraph 4 of the decision give an indication of where the respondent if he wishes may seek legal assistance on these points.

Name: Patrick M J Casey **Date:** 20 August 2019

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

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 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 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).