FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2019/0274.**
Property	**:**	**56b Morland Road, Croydon, Surrey, CR0 6NB.**
Applicant	**:**	**Bhavin Prafulchandra Patel**
Representative	**:**	**D & S Property Management.**
Respondent	**:**	**Vishwaveer Ramjotton**
Representative	**:**	**Burgess Okoh Saunders**
In attendance	**:**	**<u>For the Applicants:</u> Mr. S. Newman, Solicitor. Mr. P. Henry, Surveyor. <u>For the Respondents:</u> Ms. E. Criti of Counsel. Mr. J. Beresford of Counsel Mr. P. Mudhoo Mr. B. Gawen, Surveyor.**
Type of application	**:**	**S.27A, Landlord & Tenant Act 1985.**
Tribunal member(s)	**:**	**Ms. A. Hamilton-Farey. Mr. C. Gowman.**
Date and venue of hearing	**:**	**10 and 11 December 2019 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**27 January 2020**

DECISION

Decisions of the tribunal

(1) The tribunal determines the sum of £26,141.33, is payable respect of service charges for the financial year 2019-2020. The sum is payable within 28 days of this decision. Although the tribunal has made reductions in relation to management fees and path/hedge works, we consider the amount claimed, which is less than the tendered sum, is a reasonable in advance contribution by the respondent.

(2) The tribunal makes no determination in relation to costs but requires the parties to make and exchange submissions on costs within 14 days of this decision. The tribunal will then determine costs on the papers as soon as possible thereafter.

(3) The tribunal determines that Mr. Ramjotton was not in breach of his lease in relation to the water leaks.

The application

1. By an application dated 17 July 2019, the applicants seeks a determination of the respondent's liability to pay a service charge of £26,141.33 in relation to the financial year 1 April 2019 to 31 March 2020.

2. At the same time, the landlord sought a determination under S.168(4) of the Commonhold and Leasehold Reform Act 2002 that the respondent tenant was in breach of his lease, as a precursor to forfeiture proceedings.

3. Finally, the landlord seeks costs under paragraph 5 to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The Lease:

4. The respondent occupies the property under the terms of a lease dated 14 October 2005 between Estate Holdings Limited and Lennard Williams and Omolade Olubusola Williams for a term of 99 years from 1 April 2004 at a rising ground rent.

5. By Clause 3 of that lease the tenant covenanted to contribute 60% of all costs charges expenses estimated to be incurred by the landlord or managing agent in providing the facilities and services set out in the Fifth Schedule such payments to be treated as rent due under this lease and such payments to be made on demand and in advance of any payments being made by the landlord with regard to the services set out in the Fifth Schedule.

6. In addition, by Clause 3(2) the tenant covenanted to pay 60% of the costs estimated to be incurred by the landlord in insuring the building;

7. By clause 3(3) the tenant is to pay an interim service charge on account as specified by the landlord or their managing agents, with the proviso that should the interim charge exceed the actual service charge for the period, the balance shall be either applied to the service charge for the following year, or to the reserve fund. In the alternative, if the service charge exceeds the interim sum, the tenant shall pay the balance to the landlord within 14 days of the demand.

8. The service charge covenants within the lease allow the landlord to include a charge for a managing agent, employ surveyors, architects, engineers and accountants or other professional persons.

9. The landlord covenants in Clause 4 to perform the obligations set out in the fifth schedule to the lease, with the proviso that the landlord is not obliged to do so until the tenant has made the contributions provided for in Clause 3 of the lease.

10. The Fifth Schedule to the lease requires the landlord to maintain the exterior of the building, the maintain, clean, decorate and repair the sewers, gutters, pipes cables and conduits within the building used in common with two or more of the properties in the building.

The Hearing:

11. References to pages within the bundles are within [] brackets in this decision.

12. The applicant was represented at the hearing by Mr. S. Newman, Solicitor of D & S Management Limited with Mr. Paul Henry a surveyor giving evidence. The Respondent was represented by Ms. Creti and Mr. Beresford of Counsel and Mr. Mudhoo in support. Mr. Bruce Gawen, a surveyor giving evidence.

The Applicant's case:

13. Mr. Newman took us through the original lease [78-109] and the extended lease [864] with the incorporated terms [868], and identified the demand for payment [111], this was dated 7 March 2019 and was due for payment by 1 April 2019, he confirmed that payment had not been received.. He did confirm that the insurance charges had now been paid by the respondent, and these no longer form part of the claim.

14. He referred us to the lease and the obligations of the respondent to pay against the budget figures, he said that although the lease did not provide

for it, the landlord would have actually refunded any overpaid service charge and would not have applied it to the following year or the reserve fund.

15. He produced a copy of the budget [117] that identified a total sum for the property at £42,930.00. The budget contains a statement that '*Please note the provision is based on the Landlord's best estimate of the requires works (to the common parts and external parts) to comply with the landlord's repairing covenant and the cost of the same. For the avoidance of doubt a surveyor will be instructed to prepare a schedule of works required…. And a consultation will be undertaken pursuant to Section 20 of the Landlord and Tenant Act 1985, and the budgeted figure should not be interpreted as pre-empting the outcome of the Consultation. In the event the estimates received provide for a lower figure the leaseholders contributions will be adjusted accordingly*'

16. We were then shown the reminders for payment dated 2 April 2019 and 24 May 2019, again these sums had not been paid by the respondent.

Major Works:

17. At page [126] we were shown the Notice of Intention in relation to the major works which were due to be carried out. The Notice required observations and nominations of contractors to be given to the landlord by the 19 July 2019. The respondent made some observations [231]and nominated two contractors for the works. Mr. Newman replied on 25 July 2019 [427] regarding those observations.

18. The Notice of Proposal was served on or around the 18 September 2019, and within the prices reported, was one from [739] the respondent's contractors, Humberts, and who provided a price, albeit not the cheapest.

19. In summary the respondent requested that only those works that were absolutely necessary should be carried out., but agreed the electrical works were required [433]. He disputed that the works required a full scaffold.

Mr. Henry's witness statement:

20. We were also shown the survey report of Mr. Paul Henry [509] and the accompanying photographs. This was prepared on 17 April and lead to the specification of works that was prepared for the works [130-143].

21. In examination in chief Mr. Henry was asked to go through his specification and those of Mr. Patel. He considered that the landlord's priced specification presented value for money, considering the works required.

22. He said that in his view full scaffold was necessary and that towers would not present the ideal solution to carrying out the works. He said that savings would not be achieved because the tower would have to be moved on a regular basis. In the long run a full scaffold would present the cheapest option.

Collapsed Ceiling:

23. Within the bundle at page [531] we can see water staining to the hallway ceiling. The area concerned is directly below the kitchen of the respondent's flat.

24. Mr. Henry said that in his opinion the staining was the result of long-term water leaks. That there were several water sources in the kitchen and the vinyl floor covering did not cover the entire floor, leaving exposed floorboards.

25. Mr. Henry said that he visited twice and saw no rodent activity, and in his opinion, rodents did not chew 40mm waste pipes as is alleged by the respondent. He had taken off the kickboards and could see no signs of significant dampness.

26. He said that in his view the waste pipes from the kitchen extended beneath the floor void between the ceiling in the hallway and the floor of the flat above and had collapsed causing previous water staining at the rear of the hallway.

27. Mr. Henry gave his opinion on the major works. He said they required full scaffolding because they involved works to the main roofs. He said that it would be prudent to carry out external redecoration and repair at the same time which would prolong the life of the render below.

28. He accepted that during the contract there would likely be additions and omissions to the contract, and these would be reflected in variation orders as is usual. Although he was not sure of the works carried out by the respondent to remedy the damage in the hallway, if these had been done to a reasonable standard, the specification could be amended, and the cost reduced.

<u>Internal Landlord's Supply:</u>

29. At the present time, the electrical supply to the communal hallway is run from the respondent's meter. The landlord proposes to separate the supplies, but the tenant says the cost is excessive, and that he is happy for the existing arrangement to continue.

30. Mr. Henry said that it was UK Power Networks statutory obligation to install the feed to the meter with subcontractors carrying out the additional works.

Front Path:

31. The landlord proposes to construct a proper path to the front door of the property, remove the hedge and fit a close-boarded fence. The respondent says that this is not necessary and should be removed from the specification.

32. Mr. Henry confirmed that the existing access to the property was not particularly usable for people with buggies etc and was not properly delineated. He confirmed tht the fence would provide for less maintenance, and that proper parking was required to the front of the property.

Mr. Gawen's witness statement:

33. Mr. Gawen represented the respondent in relation to the repairs and maintenance on the building. He told the tribunal that he understood the S.20 process but believed that it restricted the landlord's ability to serve demands for payment. His attention was drawn to the case of Dollis Avenue (LRX/128/2015) and accepted that he was wrong in this belief.

34. It was his opinion that more work than was actually required to keep the property in repair had been specified, but accepted that if the specification were to be reduced and more work than specified was required, there would be a breach of the S.20 consultation regulations. He confirmed that the Working at Height Regulations applied but suggested that the works might be supervised from a ladder and not the scaffold.

35. He relied on photographs taken at the time of his inspection, and said there was no defective leadwork, but the respondent had reported water ingress and had work had been carried out. He suggested that the flashband which he advocated, would last up to 10 years, but then accepted that if he was preparing the specification, he would not specify the use of flashband, and would not supervise from a ladder, he said that the use of a full scaffold would be safer when preparing prior to painting and that a tower would not cove r the entire width of the property.

36. Mr. Gawen suggested that his price for carrying out the works (£5,000) could not be broken down, but it was reasonable to suggest that £2,000 would be used on scaffold and a further £1,250.00 on the flashings (all prices exclusive of VAT).

37. With respect to the separation of the electrical supply he could not say whether it would be possible to have the circuit certified if it was fed from another flat, and that a new supply was probably necessary.

38. He confirmed that, if leadwork was failing in one area, then it was likely that it was defective in others, but maintained the cost claimed by the landlord was too high.

Water Leak:

39. Mr. Gawen said that during his inspections he found no evidence of rodents and agrees with Mr. Henry that it would be unlikely that rodents would chew through a 40mm waste pipe.

40. He suggested that the water leak was caused by the central heating boiler that might leak when working and there was evidence of pooling on the worktop, although none below the cupboards.

41. Mr. Beresford asked Mr. Gawen if the leak might have been caused by excessive mopping as is claimed by the respondent, and Mr. Gawen confirmed that this might be within the realms of possibility.

Mr. Patel:

42. Mr. Patel confirmed that he was both a freeholder and leaseholder in the building. He said that originally, he had dealt with the management and maintenance of the building himself and had had a reasonably good relationship with the respondent.

43. He said that after the water leak occurred and was not remedied he was concerned for the health and safety of his tenants in the building, and that he could not resolve issues directly with the respondent, and therefore resorted to employing D & S to act on his behalf.

44. He confirmed that the respondent sublet his flat and had appointed an agent to act on his behalf. He had tried to resolve issues with that agent, but again could not get resolution, with the agent saying the respondent was out of the country.

45. He confirmed to the tribunal that he had eight other properties that he manages himself and therefore has experience of management and property renovation. He agreed that works outside the scope of the lease had been agreed and undertaken between the parties previously, but said it was no longer possible to do this due to the breakdown in relationships with the respondent.

46. He also said that he inspected the property every February/March from ground level to check on repairs. Having appointed D & S, he took a step back from the management of the property and 'touched base' with them as and when necessary.

47. When questioned by Mr. Beresford, he confirmed that he had been in breach of the lease in 2015 when a defect in the first-floor parapet caused a leak. That he would not pay in advance for any works but only when works were completed, and the actual cost quantified.

48. He had not considered whether the works should be phased to spread the cost to the respondent, and just determined his liability for repairs, having consulted his insurers. The policy is at [384] in the bundle.

49. Mr. Patel confirmed that he was let into the respondent's property by the tenant with the contractor Hexagon, but the respondent's agent (Miriam) did not arrive. He was not aware that the respondent's plumber was attending the same day, but in any event, he considered them to be incompetent and unable to carry out the repairs.

50. Finally, with respect to the major works he still considered the specification to be keenly priced and armed with all of the information he now had; the price was probably be too low. He said that £59,166.88 was actually required to carry out all of the repairs.

Mr. Ramjotton:

51. Mr. Ramjotton confirmed that he was the leaseholder of the subject flat, but said that he sub-let it through his agent, Miriam, and had little to do with the management of the flat. He had not been particularly involved in the service charges previously but considered the quotations supplied now to be too high.

52. He confirmed that he had purchased in 2014 but did not look into the detail of the service charges. He accepted that Mr. Patel has an idea of what things cost.

53. With respect to the bathroom leak he accepts that the responsibility for the leak rests with him, and that his contractors were not competent to identify the cause of the leaks and carry out repairs. He was angry when shown the video of showing the bath trap to be leaking and felt that this could have been identified by his agents/contractors earlier. He felt frustrated with the lack of progress but left matters to his agents to resolve.

54. During his cross examination, he accepts that the property internally and externally require redecoration and that a new path would be beneficial because sometimes it is blocked by cars. He also accepted that the

landlord was responsible for cleaning the property. He also conceded the cost for the fire risk assessment.

55. His view on the management fees charged by D & S were that they were too high but did not supply any alternative quotations for comparable costs. He accepted that the notice appointing D & S may well have gone to his spam account, and that he spoke to the managing agents who re-sent him a copy of the letter. He does not dispute that management fees and surveyors' fees are covered under the terms of the lease.

56. During his re-examination, he questioned whether the landlord had gained access to his flat legally and said that the applicant was already in the flat when Miriam attended. This is a direct contradiction of the applicant's statement; however, the respondent has not produced a witness statement from Miriam on which she could be questioned and are therefore not persuaded by the respondent's statement in this respect. In addition, for the purposes of the service charges claimed it is not relevant how the landlord gained access, and if the respondent considers that there was some breach of quiet enjoyment then this is a matter outside the jurisdiction of this tribunal.

Summaries:

57. Mr. Beresford summarised the respondent's case. He said that it was necessary to substantiate the reasonableness of the charges, and that in his view, Mr. Patel had a cavalier attitude to the charges.

58. He suggested that whilst Mr. Patel said he paid demands for service charge when received, that this would not actually be the case and Mr. Patel would pay only the actual charges and not those on account as are being asked of Mr. Ramjotton.

59. He also suggested that the adjustment of the specification by the landlord showed that the specification was unreasonable. There was evidence of previous disrepair on the part of the landlord which should be taken into consideration.

60. He also said that the reliance by Mr. Henry on years of experience was not good enough, and there were no end of defects in Mr. Henry's specification, especially in relation to scaffold costs which required further investigation. In his view the costs were unreasonable, especially in relation to the communal hallway which in his view went beyond fair, and the costs should in any event be the subject of phasing, in accordance with the 'Garside' decision. The management fees of £750.00 were unreasonable especially where Mr Patel had charged £210.00 previously and the building contained only two flats.

61. He also said that the parties had agreed the works to the path, hedge and common parts electrics were all improvements and that this was not included within the Fifth Schedule. He said that following *One Housing Group v Kingham* there was a general proposition that the term improvement should be expressly mentioned in the lease but was not.

62. In particular he said that if the requirement for the landlord to provide lighting to the common parts was already included within the Fifth Schedule, then it could not also be included within the 'sweeping up clauses'; the works to the path were not required for health and safety purposes or repairs and were not justifiable; and there was no entitlement of the freeholder to take out the hedge.

63. He criticised Mr. Patel for not engaging with Mr. Ramjotton during the consultation process for major works and that no formal or informal consultation had been place until after the demand for payment had been issued.

64. Finally, he said that due to the lack of precise evidence on the cause of the leak, with plumbers unable to determine the exact cause, this did not amount to a breach of the lease.

65. The demand for costs [166] was unreasonable and whole excessive on any measure especially where, as in this case, the landlord's representative is employed in-house by the managing agents.

Mr. Newman:

66. Mr. Newman said that the landlord had taken on board the respondent's complaint regarding the return of any un-spent monies but that in fact, the amount required to carry out the major works was more than that demanded. He said that the photographs supplied showed disrepair to the building and that one had to look at the building as a whole, and that it was a 'stretch' on the part of Mr. Ramjotton to say that there was no disrepair.

67. The lease requires a budget to be prepared and the respondent was liable for a 60% contribution towards those costs in advance. It was not, in his view, necessary to allocate the £42,000 identified in the budget to actual repairs, and that it was only necessary to arrive at a figure for budgeting purposes. The lease allowed for a single demand with no ability on the part of the landlord to issue subsequent ones during a financial year. He submitted therefore that it was reasonable for one demand to be issued.

68. He said that the respondent had agreed with the works to the landlord's supply, but subsequently changed his mind; but that it would not be possible to obtain an IECR electrical certificate when the supply was attached to a flat especially where the meter to that flat was operated by

a rechargeable key. He could foresee an instance where the meter might run out and the common parts lights would therefore not work and that could not be allowed to happen.

69. He repeated that the tenant had agreed to the fire risk assessment costs and had not asked the landlord to phase the works until now, with the effect that 'Garside' was of little help. He referred us to *Waaler v London Borough of Hounslow [2017] 1 WLR* which he said only became engaged when the tenant asked for phasing. In this case no request had been made.

70. He said that the landlord was not going outside the specification that had been consulted on. There was no dispute over the S.20 process and it was too late now for the respondent's contractors to revisit their tender with a view to providing a lower price. He also said that even if the hypothetical reductions were made to the cost, when fees and VAT were added to the remaining cost, the actual figure was very close to the sum demanded. He said that external redecoration and roof works did not lend themselves to phasing because of the need for access.

71. When considering the credibility of the witnesses he said Mr. Gawen was not an expert, had not read the lease and had no justification for the £5,000 that he considered would be sufficient for the required works.

72. With respect to the management fees, he referred to Mr. Patel sourcing alternatives, and the respondent had not produced any evidence to show that the amount claimed was excessive.

73. In addition, he did not consider the charges for cleaning, hedge cutting and maintenance as contained in the budget were unreasonable, and the main complaint by the respondent was in relation to the major works fees. He suggested that all buildings require maintenance and that the blow for the costs can be softened by the use of a reserve fund, but this lease did not allow for a reserve to be held.

74. Finally, he said that in respect to the alleged breach of covenant, the costs claimed were reasonable for two hours work plus VAT. He said that it had not originally been clear where the leak was coming from, but that now we do know. It is accepted that the respondent has remedied the breach but this was too late to prevent costs being incurred in trying to ascertain the cause of the leak, and that in any event the on-account service charge was still due and disputed by the respondent. He asked us to confirm whether the respondent was in breach of his lease, and if so whether the costs incurred in dealing with the leak are recoverable.

75. Mr. Newman said that the respondent has received poor advice and that was why the application had had to be made by the tribunal.

Consequently, the respondent should be liable for any of the costs incurred by the applicant.

Determination and reasons:

76. We are satisfied that the demand for service charges is reasonable and payable by the respondent in full, and that due to the lease terms, it was only possible for one demand to be issued. It was therefore essential for the demand to include as much of the anticipated expenditure as possible. The respondent has already paid the insurance premiums due and these should be deducted from any sum now claimed.

77. We are satisfied the S.20 consultation process was properly carried out and the respondent was given sufficient opportunity to nominate a contractor.

78. We are not satisfied that it is reasonable for the respondent to give a copy of the priced specification to his contractor with the view to identifying only those works that were required at the time. The contractor providing a 'real estimate' is highly unusual and suspicious and cannot be considered by the landlord because it was obtained outside of a competitive tender exercise.

79. We find the costs of gardening and cleaning to be reasonable and payable by the respondent.

80. We find the proposal to install a path to the front door and the removal of the hedge to be unnecessary and these items should be deducted from the specification.

81. We find the proposal to provide a dedicated landlord's electricity supply to be unreasonable. However, the respondent must ensure by either 'topping up' the meter himself or arranging for it to be changed to a credit meter, that the supply to his property cannot be cut off for any reason. We come to this conclusion on the basis that many properties are converted in this manner and operate perfectly well without the need for a separate supply. The landlord should make a small reduction from the service charge towards the cost of this supply.

82. We find the management fees to be too high for a property of this size at £750.00 per annum. The agents are paid separately for the supervision of major works and the other tasks on a small building such as this do not warrant such a charge. We find that £600.00 per annum would be a reasonable management fee for this building.

83. We do not find the respondent to be in breach of his lease in relation to the water leak into the hallway. It is accepted by the parties that inspections were carried out by both the applicant's and respondent's

contractors and these did not identify any problem with the pipework. As a consequent, we disallow the costs claimed in relation to the alleged breach of the lease.

84. The landlord should therefore prepare a schedule setting out the sums now due and claimed from the respondent in accordance with this decision. The respondent should pay the resulting sum within 14 days of the demand.

85. The respondent has made an application under S.20C of the Landlord and Tenant Act 1985, and also under Paragraph 5A to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in relation to the costs of these proceedings. The parties are to make submissions on both matters within 14 days of the date of this decision and provide evidence on which they rely (including time sheets and details of hours spent) to support their relative cases. The tribunal will deal with those matters on the papers provided within 14 days of receipt.

Tribunal: Ms. A. Hamilton-Farey
Mr. C. Gowman Date: 27 January 2020.

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).