FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2019/0258**
Property	**:**	**Flat 2 Townsend House, 22-25 Dean Street, London W1D 3 RY**
Applicants	**:**	**Cameron Willats**
Representative	**:**	**Litigant in person**
Respondent	**:**	**Royal London Mutual Insurance Society Limited**
Representative	**:**	**Mr Adrian Carr -Counsel Mr Nick Saville Ms Martini- Solicitors**
Also in attendance	**:**	**Mr Louis Rathbone Ms Jane Rattigan for the managing agents**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Daley Mr S Mason BSc FRICS**
Date and venue of Hearing	**:**	**13 January 2020 at 10.00 am, 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**17 February 2020**

DECISION

Decisions of the tribunal

The tribunal makes the determinations set out in the decision below.

The application

1. The Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985, in respect of the reasonableness and payability of the service charges for the years 2017, and 2018, 2019 and 2020.

2. Directions for the determination of this matter were given at a case management conference on 6 August 2019.

3. Where the Tribunal decided that the following issues would be determined

   (i) The reasonableness of the service charges for the years in issue.

   (ii) The reason for the increase in the charges over the years in issue.

   (iii) the effect on the non-provision of accounts over the years of the claim

   (iv) the reasonableness and payability of the major works including whether the landlord had complied with statutory obligations to consult

   (v) whether the costs are payable in accordance with section 20B of the landlord and tenant Act 1985

   (vi) Whether an order under section 20C of the 1985 Act and or paragraph 5A of Schedule 11 of the 2002 act should be made.

The background

4. The premises which are the subject of this application are a 306 sq. /ft. studio flat. The building in which the premises is situated is arranged over 6 floors with a basement and a penthouse area. The Residential part of the building arranged on floors 3 to 5, the lower floors are commercial. The basement is occupied by a dance studio, and the ground floor by a restaurant.

5. The Respondents in this matter were the freehold owners of the premises Royal London Mutual Insurance Society Limited ("RLUKREF") Nominees (UK) One Limited and RLUKREF Nominees (UK) Two Limited the landlord.

6. The Landlord had engaged two firms of managing agents to manage the building Jones Lang LaSalle (JLL) who managed the whole building and Rendall & Rittner who managed the residential part of the building.

7. The premises are subject to a lease agreement dated 29 October 2002. The lease provides that the Respondent will provide services, the costs of which are payable by the leaseholder as a service charge. The Applicant's service charge contribution is payable at 3.5%.

8. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

General issues in respect of all of the service charge years in issue

9. Mr Willats stated that his first issue was that he had not received accounts for the period in issue up to August last year. He also queried the apportionment used by the Respondent which was said to be based on square footage of the premises. He submitted that the measurements were not accurate. He stated that he should be charged less. He reached this conclusion on the basis that there were 3 identical flats which had different apportionment.

10. Mr Willats also had issues with the presentation of the accounts, in his statement of case he referred to numerous errors in the accounts. He also queried the treatment of VAT in the different years. Mr Willats was also concerned about the apportionment of VAT as the split was not shown between the residential and commercial, and VAT had not been treated in the same way across the accounts.

11. He further queried the rising cost of the service charges from year to year which he considered could not be justified and as such amounted to overcharging by the Respondent.

12. Mr Willats also set out his concerns that the service charges had not been audited.

13. In reply, Mr Carr dealt with the issue of apportionment, clause 6.8 provided that the Landlord could change the apportionment. In order to do so "… in the reasonable opinion of the landlord it must have become necessary or equitable" and secondly the managing agent must recalculate the percentage proportion of the service charges "appropriately". The lease also required the managing agent to notify the lessees.

14. The Tribunal were told that the detail of this was sent out in Mr Rathbone's witness statement. Mr Rathbone explained that the recalculation had been in effect since 2013.

15. The charges had been split into schedules depending on which part of the building benefits from those charges, based on the lettable area of each unit. This also applied to the commercial units. There were two schedules of service charges schedule 1 was charges payable by the whole building (42% to the residential lessees and 58% to the commercial lessees.) Schedule 2 deals with service charges payable by the Basement, Offices and Flats 51% to residential lessees and 49%.

16. However in respect of the apportionment exercise referred to by Mr Rathbone, the effect of the new apportionment had benefitted Mr Willats. In 2017, had he had 3.5 % apportioned as his contribution, he would have paid £3,514.56. However in 2017, he had in fact been charged less he was charged (3.127%) this equated to service charges of £3,150.32.

17. In respect of the issue concerning VAT, VAT had been treated differently for that year however Mr Carr asserted that this made no difference to the charges payable by Mr Willats. As it was a mixed use building the treatment of VAT for the commercial units was different as it was recoverable by them, however it was payable by Mr Willats.

18. In respect of the lack of auditing of the accounts, Mr Carr noted that the lease stated that Clause 4.3.1 which provided that the certificate could be signed by the Lessor's auditor or accountants or managing agent. There was no requirement for the certificate to be signed by an independent accountant. Given this, the landlord was entitled to have the accounts certified by the managing agent.

19. Mr Carr also noted that there had been factors which had led to the service charges increasing from year to year. In 2017, he noted that there were a number of problems within the building with communal heating and hot water system. This was attributed to by poor maintenance of the system prior to 2017. The heating and hot water system remained an issue for 2018, which resulted in the need for major works. There was also another major work item in 2018. In 2019 there were new tasks undertaken in relation to health and safety and maintenance contracts etc.

20. Mr Carr provided a detailed skeleton argument in which he referred to the relevant clauses in the lease. He also provided legal authorities, in his skeleton argument which dealt with the general issues. The Tribunal noted that there were no challenges to the service charges on the basis of the interpretation of the lease; neither did Mr Willats submit that the charges had been incurred outside of the lease terms, or question the legality of the charges.

The decision of the Tribunal and reason for the decision

21. **The Tribunal accepted Mr Carr's submissions concerning the issues such as the apportionment, and the auditing of the accounts. It considered that the lease provided the landlord with an appropriate**

mechanism for dealing with changes to the apportionment of the service charges. The Tribunal accepted that the Applicant was not prejudiced by these changes. In respect of the increases in the charges, this would be considered by the Tribunal on the basis of the issues that the leaseholder challenged in terms of the individual service charge items.

22. **The Tribunal noted the wording in clause 4.3.1, this wording provided that the certificate could be provided by the Lessors managing agent. We noted the accounts and considered that the accounts were prepared and presented in accordance with the terms of the lease.**

23. **On a point of general observation the Tribunal noted that the font size of the accounts which dealt with the items of expenditure could be increased to add the presentation of the accounts.**

24. **The Tribunal noted the matters set out; however these matters did not amount to challenges under Sect 27 (a) of the Landlord and Tenant Act 1985.**

Service charges for 2017

Charges for the lift maintenance

25. Mr Willats noted that there were service contract duplicates between Jackson Lifts and Crest Lifts.

26. Mr Carr on behalf of the Respondent accepted that there had been duplicate charges for the periods 2017, 2018 and 2019. This was because a termination letter had not been sent to the first contractor. The duplicated over paid sum was £10.74, this was conceded for each of the years in issue.

27. Mr Willats next issue was the fact that the Respondent had not consulted on the Maintenance contract with Integral UK which was a long-term qualifying agreement. Given this, he stated that the charge should be limited to £100.00 per year.

28. Mr Carr agreed that the Respondent had not been consulted in accordance with Section 20 of the LTA 1985. Accordingly the Respondent was prepared to give the tenant a credit for each of the years in issue. Mr Carr stated that the sums credited were as follows-: 2017- £ 1029.32, 2018-£1044.55 and 2019 -£1035.23.

The decision of the Tribunal and reason for the decision

29. **The Tribunal noted the Landlord Concessions, on the basis that these matters have been conceded, the Tribunal made no findings in**

respect of this service charge; it accepted the Respondents concession as conclusively dealing with the outstanding issues in relation to these charges.

Charges for the M & E Contract

30. Mr Willats also raised lack of consultation over the M & E reactive contract. The Tribunal was told that this contract was paid quarterly for maintenance of the mechanical & Electrical items such as the fire alarm, dry riser, CCTV the boiler and access control. Two maintenance visits were carried out a year, and the cost was £799.04 per quarter. The Tribunal noted that the charges were less than £100.00 per leaseholder accordingly, the agreement was not a qualifying long term agreement, and as such the issue was whether the charge was reasonable.

The decision of the Tribunal and reason for the decision

31. **The Tribunal noted that although Mr Willats, challenged this charge, he did not provide any alternative evidence concerning the reasonableness of the charge. Further he did not assert that the work had not been undertaken. As the Applicant it is for Mr Willats to prove his case and given the lack of evidence concerning the reasonableness of the charge, the Tribunal has used its own knowledge and experience of such charges.**

32. **We find on a balance of probabilities that the sums claimed under the M& E Contract for each of the years in issue is reasonable and payable.**

Charges under the Intergral Limited Charges

33. The Intergral UK Limited charges (invoices 668985, 678080,651110 and 702781) in the sum of £6988.16. Mr Willats stated that the sums of money charged as a service charge should not be payable, as the work undertaken should have been included in the M & E contract. The Tribunal was informed by the Respondent's managing agent that the additional costs incurred was to replace hot water pumps, Gas Sananoid values, heating pumps, emergency light and remedial test. These items were considered to be consumables or parts that were deemed to need replacing once the maintenance inspection had taken place. These items were outside the scope of the contract.

34. The Tribunal was informed that the contract was considered to be a long term qualifying agreement, which was tendered for every 5 years. The contract was for property maintenance, mechanical and electrical assets which were inspected 4 times a year. However the inspection process revealed that some items needed replacement because of wear and tear. This was not normally

covered by the maintenance contract, however, the Respondent considered the costs for the items as set out in the accounts to be reasonable and payable.

The decision of the Tribunal and reason for the decision

35. **The Tribunal did not accept that these items ought to have been included in the M & E contract, it was clear that the cost of these items were extract to the contract in that they were items which were payable for wear and tear. No challenge was made to the actual sums paid for each item; accordingly the Tribunal finds that the sums paid to Intergral Limited are reasonable and payable.**

The Balancing service charge in the sum of £638.85.

36. Mr Willats stated that the demand for these charges was served over 18 months after the charges had been incurred. He stated that the Respondent had not sent out a section 20 B Statement. Given this, the sums set out as balancing charges were not payable.

37. The tribunal heard evidence from Miss Bradnock that letters had been sent out by first class post on 10 August 2018. Miss Bradnock stated that she had sent these letters out by first class post. Mr Willats stated that he had not received a copy of this letter, and had only seen it when it was served along with documents for this hearing on 13 December 2019.

38. He also referred to the minutes of a residents meeting on 24 April 2019 in which it was stated that the managing agent had acknowledged that the accounts were being served late. It was minuted under: *Demands, budget, and accounts,* that –:" *It was noted that no leaseholders had received a Section 20B in relation to the 2017 accounts…"* noted that there was no reference to a letter having been sent out in August.

39. Miss Bradnock stated that she had not been the minute taker or approved the minutes prior to them being sent out.

40. Mr Willats informed the Tribunal that each of the leaseholders had individual post boxes in which there mail was placed, he referred to other leaseholders who had not received the August 2018 letter from the managing agents.

The decision of the Tribunal and reason for the decision

41. **The Tribunal carefully considered the evidence on this point, it noted the minutes of the meeting, in which it appeared to have been accepted that the Section B letter had not been sent out at the meeting dated 24 April 2019. It noted that Ms Bradnock had not prepared the minutes and therefore she did not consider them to accurately reflect what had been discussed.**

42. **However, it was clear to the Tribunal that the section 20B letter had been an issue at that meeting, as had the late demand. The Tribunal accepts that the letter had not been universally received. Accordingly the Tribunal find that Mr Willats had not received the letter and that as the sum claimed was caught by Section 20B. The Tribunal is not satisfied that the sum claimed is payable.**

Service charges for 2018

43. Mr Willats' challenges to the service charges were for the same items as for the previous year.

44. In respect of the duplicate charges for the lift and the M& E Contract the Respondent had provided details of refunds for the over payments.

45. In respect of the M & E reactive charges the Respondent noted that the Applicant had provided a lack of detail concerning his challenges. The Tribunal was informed by Mr Rathbone that in July 2018 Thames Water had reduced the water pressure in the pipes which supplied the building. The pressure had dropped. The Landlord had to fit a booster. There had also been problems with work needing to be done to access systems not being complaint with regulations.

The Property Serve UK and SAMAC Construct Serv Limited charges

46. Mr Willats complaint was that there were two suppliers who provided minor services at inflated prices. He did not provide any alternative estimates for the work.

47. The Respondent in their statement of case, contained in the Scott schedules, stated that PSUK had invoiced for 5 attendances in the Building in 2018. The respondents detailed 5 attendances at the property to carry out work of disposal of rubbish and attending to items such as pest control/rodent removal. As well as a broken door stop.

Samac Construction Services

48. The Tribunal was told that the above firm carried out smaller jobs on site and that they provided a general maintenance and repair service. However on or around 31 May 2018 Samac carried out an attendance at the property which involving fitting 12 locks and suppling keys to the riser access doors, and 28 additional keys to the premises. Supplying and fitting of a barrier to prevent tenants walking off the side of the staircase and clearing out cupboards and disposing of waste. This was at a cost of £2,794.80.

49. The Tribunal was also informed about two items of planned expenditure which had been the subject of major works consultation. One item was in relation to the intercom system which needed replacing. The Tribunal had before it copies of correspondence from Hils Jago dated 13.02.2018. The Secretary of the residents association. He set out that the system was not working. In his email he referred to the fact that the system was over 20 years old and in need of replacing. The cost of this item was £9,700.00.

50. The other item was for work that had to be undertaken to the boiler and cold water system, there had also been complaints about the failure of the boiler system at a cost of £10,569.00.

The decision of the Tribunal and reason for the decision

51. **The Tribunal noted that although Mr Willats was concerned about the escalating service charges, he did not challenge the service charges on the basis that the work had not been carried out, neither did he assert that the work was unnecessary. The Tribunal noted that by clause 5.3 and Schedule 6 of the lease, the landlord was required to keep in repair and maintain the reserved parts. The Tribunal had no information before it, which suggested that the work was outside the scope of the covenants in the lease. Further the explanation for the work and the details of the cost incurred were accepted by the Tribunal.**

52. **Accordingly we are satisfied that the work undertaken by as reactive M & E works, and the sums paid to The Property Serve UK and SAMAC Construct Serv Limited charges were reasonable and payable.**

53. **The Tribunal also accepted that the work planned as major works in respect of the intercom system and the boiler system were required, we rely upon the emails of Hils Jago. The Tribunal also noted that there was no substantial challenge by Mr Willats, of the necessity of the work, neither did he set out alternative estimates for this work.**

54. **Accordingly the Tribunal finds the sums charged for service charges for 2018, other than the items conceded by the Respondent to be reasonable and payable.**

<u>Service charges for 2019</u>

55. The Tribunal noted that many of the items in this schedule had been dealt with under the general heading or alternatively as items for 2017, and 2018 such as the charges under the M& E contract.

56. Mr Willats in his statement of case made complaint about the increase in the expenditure over and above the service charges in the 2018 unaudited accounts.

57. The Tribunal was told that the fire alarm system had been replaced as a major work. The monies had been collected on account. As this was a schedule 1 expense 41% had been payable by the residential occupants. The cost of this item including project management had been £31,007.50.

58. In respect of the increase, the Tribunal was informed that risk assessments and safety audits had been carried out at a cost of £3,747.15

59. Mr Willats also challenged the cost of the electricity which had increased from £4978.89 to £9450.93 in 2019.

60. The Tribunal was informed that the meter produced half hourly readings. There was no explanation as to why this had increased.

The decision of the Tribunal and reason for the decision

61. **The Tribunal noted that although Mr Willats was unhappy about the charges, he provided no substantial challenge to these items.**

62. **The Tribunal accepted the explanation provided by the Mr Carr on behalf of the Landlord, The Tribunal accepted that on the basis of the information provided the cost was reasonable and payable.**

63. **The Tribunal did note that the increase in the electricity, although it is supported by meter readings, is substantial as it has almost doubled in a year with no explanation. Given this; the landlord should carry out further investigations to ensure that the electricity is not being misused in any way.**

Application under s.20C and refund of fees

64. In the Application, the Applicant indicated that he wished to apply for an order under section 20C of The Landlord and Tenant Act 1985. This was opposed by Mr Carr. He stated that the landlord had made early concessions in relation to some of the service charge items, where they had been over payments by the Applicant. However these items were not conceded in the statement of case. We also found that the balancing charge for 2018 was caught by section 20B, Based on the Tribunal's findings, and the landlord's concession at the hearing. **The Tribunal is satisfied that it is reasonable to make an order. The Tribunal also orders reimbursement of the Applicant's application and hearing fee.**

Signed Judge Daley

Date: 17/02/20

Appendix of relevant legislation

Landlord and Tenant Act 1985

(1) Section 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).

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).