FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2019/0247**
HMCTS Code (P:Paper, V:Video; A:Audio).	**:**	**P: Paper Remote.**
Property	**:**	**56b Morland Road, Croydon, Surrey. CR0 6NB.**
Applicant	**:**	**Bhavin Prafulchandra Patel.**
Representative	**:**	**D & S Property Management.**
Respondent	**:**	**Vishwaveer Ramjotton.**
Representative	**:**	**Burgess Okoh Saunders.**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge. A determination under S.164(8) Commonhold and Leasehold Reform Act 2002 that the Respondent is in breach of the lease.**
Tribunal members	**:**	**Ms. A. Hamilton-Farey.** **Mr. C. Gowman**
Venue	**:**	**10 Alfred Place, London WC1E 7LR on 10 and 11 December 2019**
Date of this decision	**:**	**19 May 2020**

DECISION

Covid-19 pandemic: description of hearing.

This has been a remote determination on the papers/submissions which has not been objected to by the parties. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to includes submissions from the parties as well as cost schedules, and invoices in relation to costs. These papers have been considered, as has the original decision, and the decision to review the original decision already provided to the parties.

The orders made are as described in this decision with reasons.

Decisions of the tribunal.

(1) The tribunal's determination contained in paragraph (1) of the original decision dated 27 January 2020 stands.

(2) Subject to confirmation by the applicant that the communal hallway has been redecorated to a good standard, the respondent shall not be liable for the cost to redecorate this area.

(3) The tribunal determines that the respondent, Mr. Ramjotton was in breach of his obligation to repair the pipework to the bathroom flat.

(4) The tribunal determines that the application by Mr. Ramjotton for costs under Rule 13 of the Tribunal's Procedure Rules fails and that he is not entitled to recover any of his costs from the applicant in relation to this application.

(5) The tribunal determines the rate of £250.00 per hour for an in-house solicitor is reasonable in relation to these applications.

(6) The tribunal therefore determines that the applicant's application under Paragraph 5 to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 succeeds, in relation to the S.27A application and the application under S.168(4) in relation to the bathroom leak, but not in relation to the ceiling collapse.

(7) The total amount of those costs is assessed at £15,612.00 in relation to the S.27A application and £3,565.63 contractual costs in relation to the S.168(4) application, total £19,177.63. These sums include the cost of the report prepared by Mr. Paul Henry and the preparation of his report.

(8) The applicant has indicated that no costs of these proceedings shall be placed on the service charge account, and the tribunal therefore makes no Order under S.20c Landlord and Tenant 1985.

(9) The tribunal determines that the Respondent shall pay the Applicant the sum of identified in this decision within 28 days of this Decision

The application

1. The details of the application are known to the parties and it is not intended that they should be rehearsed again in this decision, except to say that the tribunal is dealing with an application under S,.27A Landlord and Tenant Act 1985 in relation to an on account demand for service charge; an application by the applicant for a determination that the respondent is in breach of his lease in relation to lack of repair; an application by the landlord under Paragraph 5 to Schedule 11 of the Commonhold and Leasehold Reform Act. An application under S.20C of the Landlord and Tenant Act 1985 on the part of the respondent that the costs of proceedings should not be included in the service charge for the building, and an application under Rule 13 of the Tribunal Procedure Rules by the respondent for his costs in these proceedings.

The hearing

2. The Application was dealt with at a hearing on 10 and 11 December 2019. The decision following that hearing was made on 27 January and issued shortly thereafter.

3. Following receipt of that decision, the applicants requested some clarification regarding the S.168(4) application, and the tribunal decided that it would take that correspondence as an application to appeal and/or review of that decision.

4. The tribunal informed the parties that it would review the decision and requested submissions. The tribunal also requested sub missions on the matter of costs from both parties.

5. Submissions have been made by the parties, and in addition the respondent has requested clarification of the amounts payable given the sums that had been disallowed by the tribunal in the original decision.

6. This further decision therefore deals with all outstanding matters raised by the parties**.**

The issues:

How much is payable by the respondent?

7. In its decision of 27 January 2020, the tribunal determined the respondent to be liable for the full claim of £26,141.33, in respect of the financial year 2019-2020. The tribunal explained why it had made that decision in paragraph 1 of the decisions, but this has now been questioned by the respondent.

8. For clarification, although the tribunal has determined that certain sums in the service charge should be reduced, or are not payable by the respondent, the amount claimed by the application in this application is actually less than the respondent's liability for the major works tender that had been provided in the bundle. Although the respondent is therefore due some credits for the service charge, overall his liability exceeds that which was claimed by the applicant. The tribunal therefore considered the respondent to be liable for the full

amount claimed, which would then be adjusted at the end of the financial year and when the major works contribution was finalised.

Was the respondent in breach of his lease?

9. The tribunal was satisfied that although a leak had been identified in the bathroom, by the respondent and that he sought advice on the matter, he did not employ professionals of sufficient quality or experience to identify and resolve the problem. No evidence was provided to us at the hearing of any action that his managing agent might have taken to alleviate the problem of water penetration, and in his own submissions the respondent conceded that when the video was taken of the area under the bath, it was obvious there was a problem. Had the respondent or his agents dealt with the problem more speedily then it is likely that less damage would have occurred.

10. On balance therefore the tribunal finds the respondent to have been in breach of his lease for failure to repair the pipework serving the bathroom of his flat.

11. The tribunal has already determined that there was no breach of the lease in relation to the collapse of the ceiling in the communal areas of the building.

The respondent's S.20c application:

12. The respondent has made an application under S.20C of the Landlord and Tenant Act 19085 to limit the landlord's costs of proceedings through the service charge.

13. The applicant has confirmed that it does not intend to recover any costs through the service charge and in the circumstances, it is not necessary for the tribunal to make an Order and therefore declines to do so.

Costs:

14. The respondent applied to the tribunal for a determination of his costs under Rule 13 of the tribunal procedure rules. The

applicant applied under Paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for their costs and for contractual costs under the lease in relation to the S.168(4) application.

15. The tribunal has read the lease and considers that Clause 2(r)(ii) places an obligation on the respondent to pay costs incurred as a result of non-payment to the landlord. This includes costs of surveyors, managing agents and legal costs. These are the contractual costs referred to in this decision.

16. In addition, Paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 enables a tenant to make an application to this tribunal to prevent a landlord from recovering litigation costs (Paragraph 5A(3). The tribunal has a wide discretion to determine a just and reasonable sum in relation to those costs.

17. The tribunal has been provided with a detailed breakdown of the costs claimed. We have determined that the rate of £250.00 per hour is reasonable for an in-house solicitor and having considered the number of hours for which a claim is made, we find them to be reasonable.

18. We also find the applicant's representatives apportionment of those costs to be reasonable, where those identified in relation to the ceiling collapse have been properly deducted from the total originally claimed. We have also been provided with invoices in relation to the costs claimed.

19. During the hearing there was no objection by the respondent to the applicant being represented by an in-house solicitor, and we find that this is not an entirely unusual scenario.

20. Although the respondent has said that the costs are unreasonable and/or irrecoverable we do not find this to be the case. Offers to settle this dispute were made by the applicant and refused by the respondent, and it is therefore proper that the applicant made the application to the tribunal as the only way to finally resolve the dispute. We cannot find that it was an unreasonable step for the applicant to take, and in the circumstances, the respondent must bear the costs of the applicant having to take the action that he did.

21. The tribunal therefore finds the respondent to be liable for the costs claimed in relation to the S.27A and S.168(4) applications, bar those relating to the collapsed ceiling, to be reasonable and payable by the respondent.

Name: Ms. A. Hamilton-Farey **Date:** 19 May 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).

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).