



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AH/LSC/2020/0088**

**HMCTS code
(paper remote)** : **PAPER REMOTE**

Property : **Flat 2, 271 Holmesdale Road,
London SE25 6PR**

Applicant : **Miss S Bernard**

Respondent : **Gala Properties Limited**

Representative : **Mr Clacy**

Type of application : **Liability to pay service charge and
administration charges**

Tribunal member(s) : **Mr I B Holdsworth FRICS MCI Arb**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **4 November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers {PAPER REMOTE}, which has been consented to by the parties. A face-to-face hearing was not held because it was not practical and all issues could be determined in a remote hearing on paper.

The documents referred to are contained in two bundles, one prepared by the Applicant the other submitted by the Respondent the contents of which I have read and noted. The Applicants responses were also reviewed.

Decisions of the Tribunal

- 1 The Tribunal determines that the sum of **£1,382.32** is payable by the Applicant, in respect of the disputed service charges for the service charge year **1 April 2017 to 31 May 2018**.
- 2 The Tribunal makes the determination as set-out under the various headings in this Decision.
- 3 The Tribunal makes an Order under section 20C of the Landlord & Tenant Act 1985, so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

- 4 The Applicant seeks a determination pursuant to section 27A of the Landlord & Tenant Act 1985 ('the 1985 Act') and Schedule 11 to the Commonhold & Leasehold Reform Act 2002 ('the 2002 Act') as to the amount of service charge and administration charges payable by the Applicant.

The hearing

- 5 The matter was determined on paper. Due to Covid-19 restrictions it was not practical or deemed necessary for a hearing to be convened.
- 6 Due to the Covid restrictions it was not possible for the Tribunal to inspect the property. The dwelling was viewed from Google maps, as no photographs of the building were provided by either the Applicant or Respondent.

The background

- 7 The property, which is the subject of this application, is a two-storey dwelling divided into four self-contained flats.
- 8 The freeholder proposed to carry out major works to the property in 2015/16. This included refurbishment of external elevations and the communal space. The managing agent, LMD carried out the statutory consultation process after seeking necessary advice from MPM surveyors on appropriate works. The Surveyors prepared schedules of work and tender specifications ready to issue to contractors.
- 9 The Section 20 Notification of Intent to carry out the works was issued to leaseholders on 20 May 2016 and this included estimated works costs at

£101,490.49. The leaseholders decided not to pursue the works and asked to acquire the freehold of the premises from the freeholder.

- 10 The Tribunal are told the freehold of the property was subsequently purchased by the leaseholders who have now established a Right to Manage Company.
- 11 The Applicant holds a long lease of the property, which requires the Landlord to provide service and the Tenant to contribute toward the costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

- 12 Miss Bernard, the leaseholder Applicant seeks a determination under section 27A of the Landlord & Tenant Act 1985, as to whether a service charge is payable. The Applicant also seeks an order for the limitation of the Landlord's Court costs in proceedings under Section 20C of the 1985 Act.
- 13 Miss Bernard disputes four service charge items, which amount in total to £2,276.24. These charges were levied during the service charge period 1 April 2017 to 31 May 2018.
- 14 The disputed service charges referred to the following specific items:
 - a. Surveyor's fees associated with the preparation of work schedules for major improvement works, which were proposed for the building. The inspections and schedules of work were prepared in 2016 and the sums were sought from the Applicant in 2019. These charges are considered unreasonable and excessive for the work undertaken;
 - b. Management charges associated with the major works amounting to £665.57: It is claimed the cost of these management charges is unreasonable, as the works did not proceed.
 - c. An administration charge made to the RTM Co of £33.75: This charge was made for the review of papers sent to the Landlord by their instructing solicitors.
 - d. A building insurance charge of £43.45: It is claimed this sum of money relates to the period 19 April-31 May 2018, which was not a liability, as this period fell after the RTM Co had been acquired by the lessees.
 - e. It is also requested that an Order under section 20C of the 1985 Act be made.
- 15 Having reviewed the submissions from the parties and considered all of the documents provided, the Tribunal has made its determination on the various issues as follows:

The Tribunal's Decision

- 16 The Tribunal determines that the amount payable in respect of the **surveyor's fees** is £1,277.89.

Reasons for the Tribunal's Decision

- 17 The Tribunal has carefully reviewed the schedules submitted by the Respondent to justify the total charge of £10,223.13 inclusive of VAT in respect of the surveyor's input to the major works.
- 18 The costs of these fees were advised at the outset in the Notification to all lessees. There is no evidence the fees were challenged at the time the Notice of Intent was issued.
- 19 The scope of the works were comprehensive and detailed.
- 20 The Applicant argues that the fees are based upon the proposed cost of the major works estimated at £101,490.49. She argues these costs were never competitively tendered and that after the RTM Co acquired the property a similar scheme was carried out at significantly reduced costs. Some comparable charges are presented for scope and specification works undertaken by MPM surveyors on the subject property in 2011. These amounted to £1909.25 exclusive of VAT. The extent of these works is not known.
- 21 From the knowledge and experience of the Tribunal who regularly undertake similar assignments, the likely costs of undertaking supervision of the works had they been implemented is in the range of 40%-60% of the advised fee.
- 22 The Tribunal acknowledges the Respondents discounted their original fee charges for this work by 40%. After careful review, the Tribunal has increased this discount to the fees to 60%. This is to reflect the likely savings that would have been made:
 - Had the scheme been competitively tendered prior to implementation; and
 - the reduced time expended on the scheme by the surveyors as it was not implemented.

Management Charges

- 23 The Tribunal determines that the amount payable in respect of the **management charge** is £332.79.
- 24 The total charge payable, inclusive of VAT was advised as £5,324.56. A deduction of 50% was made in the submission by the management company, to reflect the likely saving as a result of this matter not proceeding to completion.
- 25 The Tribunal acknowledges that much time and effort was devoted to the preparation and distribution of statutory notices but is also aware of the relatively small number of lessees of the building and the significantly reduced workload, following the decision not to proceed with the major works.
- 26 The Applicants argument that the proposed costs are unreasonable is also proffered by the Applicant and this led to inflated management charges.

27 After deliberation, the Tribunal has determined that 25% of the agreed fee should be payable. This equates to £1,331.40 and a subsequent share payable by the Applicant of £332.79.

RTM Co review charges

28 The Tribunal determines that the charges in answering **RTM Co query are £27.22.**

29 The Respondent advises in their submission that the hourly charge of the solicitor who dealt with the query is £330 (inclusive of VAT). Although a timesheet was not provided, the Respondent informed the Tribunal the query took approximately 20-minutes or one-third of the hourly charge, equivalent to £108.90. This equates to a charge of £27.22 payable by the Applicant.

30 The charges are based upon the Respondent's submission and the Tribunal has accepted these charges.

Insurance charges

31 The Tribunal determines the amount payable by the Applicant in respect of the insurance premium is **nil.**

32 The Respondent argued that any refund due to the lessees would be offset by the cancellation charges made by the insurance company and broker. Although the policy documents were provided to the Tribunal, there was no evidence in the Respondent's submission that justified the statement that cancellation charges exceeded the costs of any reimbursement.

33 The Tribunal note it was not disputed that the insurance liability was taken by the RTM Co for the period in dispute.

34 The Tribunal determined that, due to the lack of evidence to support and confirm the assertion made by the Respondent, no monies should be payable by the Applicant in respect of the insurance period 19 April-31 May 2018.

35 A summary of the Determination is shown in table 1 below:

Flat 2 271 Holmesdale Road London SE25 6PR				
Disputed service charges and administration charges for service charge year				
1st April 2017- 31st May 2018				
Disputed Items				
	Total charge with vat	Allowed proportion	Total payable	Sum payable by applicant
Surveyors fees for aborted major works	£10,223.13	40.00%	£4,089.25	£1,022.31
Management charge	£5,324.56	25.00%	£1,331.14	£332.79
Response to RTM query	£108.90	100.00%	£108.90	£27.22
Insurance premium				£ -
Total sum payable(including VAT)				£1,382.32

36 The monies payable by the Applicant are shown in the far right-hand column and all charges include VAT.

Application under section 20C and refund of fees

37 The application to the Tribunal the Applicant applied for an Order under section 20C of the 1985 Act.

38 Having considered the submissions from the parties and taken into account the determination above the Tribunal determines that is just and equitable in the circumstances for an Order to be made under section 20C of the 1985 Act, so that the Respondent may not pass on any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

39 The cost of the application fee charged by the Tribunal should be borne by the Applicant.

40 Accordingly, the Tribunal determines that the sum of £1,382.32 is payable by the Applicant in respect of the disputed service charge items for the years 1 April 2017 to 31 May 2018.

Name: Ian Holdsworth **Date:** 04.11.2020

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).