



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

Case reference : **LON/00BB/LSC/2019/0259**

Property : **Apartment 19, The Renovation, 4
Woolwich Manor Way, London E16
2GE.**

Applicant : **ION Residents Management Company
Limited.**

Representative : **Mr. Luke Gibson – Solicitors Agent.**

Respondent : **Mr. Ammer Nadeed Atarid.**

Representative : **In person**

Type of application : **S.27A, Landlord & Tenant Act 1985.**

Tribunal member(s) : **Ms. A. Hamilton-Farey.
Mr. P. Roberts DipArchRIBA.
Mr. O. Miller.**

Date and venue of hearing : **22 January 2020 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **12 February 2020**

DECISION

Decisions of the tribunal

- (1) The tribunal determines the sum of £24,553.60 is payable by Mr. Atarid in relation to his spreadsheet of disputed sums. We disallow the balance of that claim ($£42,905.00 - £24,553.60 = £18,351.40$).
- (2) The tribunal determines that the on-account service charge for 2019 is payable in full.
- (3) The tribunal makes no determination in relation to the cash account until further details have been supplied by the applicants.

The application:

1. By an application dated 15 July 2019, the applicants seek a determination of the respondent leaseholder's liability to pay service charges for the years 2015 – 2019 inclusive. It is said that the amount outstanding is £69,579.10.

Directions:

2. Directions were issued by the tribunal on 21 August 2019 that required the parties to exchange documents on which they wished to rely, including a statement setting out those matters that were disputed and why.
3. The directions identified two distinct matters for determination; Firstly, the service charge for the years in question, and also the cash account details showing debits and credits and whether they are payable by the respondent, and if so, whether they are reasonable.

The Lease:

4. It is not disputed by the parties that the respondent occupies under the terms of a lease dated 31 January 2001.
5. By Clause 15.2.1 of that lease the applicant is required to make half-yearly demands for on-account service charges, on 1 January and 1 July in every year.
6. The respondent's contribution is limited to 10.88% of the total charge.

7. It is accepted that previous proceedings before this tribunal for the years 2003-2007 resulted in a 30% reduction against the service charge.

The Hearing:

8. The applicants were represented at the hearing by Mr. Luke Gibson, a Solicitors' Agent. The respondent, Mr. Atarid represented himself.

9. It is not disputed that the current managers appointed by the applicants are Habitare Services, and prior to that Rynew Property Management Ltd were managing between July 2016 and December 2018 and that Rendall and Ritner were the managers from January 2008 until July 2016. Rynew Property Management went into receivership in 2018 and it has not been possible to obtain all of the information from them relating to the service charges.

10. The parties requested the tribunal make a disclosure order under Rule 20(1)(b) against Rendall and Ritner in relation to the documents they might hold in respect of their management. This request was refused by the tribunal finally on 13 November 2019 whereupon the parties were free to attempt to gain information without the order of the tribunal. It does not appear from the hearing that any documents were received from Rendall and Ritner, and there is therefore a 'gap' in the information available to both the parties and tribunal.

11. Both parties had provided a statement of case. In his response Mr. Atarid claimed that the reserve funds of approximately £49,621 were missing from the accounts. He also claimed a conflict of interest had arisen when one of the directors of Rynew the previous property managers became a director of the management company, and was ordering works, possibly to related companies. We have no evidence whether that is in fact that case, and although the tribunal considers such an appointment to unusual, we must assume that the management company understand its' obligations in relation to transparency of the accounts and are unable to comment further.

12. We were taken through the bundle by Mr. Gibson. He confirmed that in respect of the years 2015/16 there is little information available. No evidence of demands has been supplied in the bundle, and a statement of account [112] has been provided which shows the actual sum outstanding from Mr. Atarid to be in the region of £79,000.

13. Mr. Atarid had produced a schedule of the service charges he disputed as well as an annotated breakdown of individual charges that he considered to be not reasonable, or not payable under the terms of his lease.

14. One of Mr. Atarid's main complaints was the lack of transparency in the cash accounting, which he said was muddled and did not give a true

position of the debits and credits against his account. For example, he identified more than one sum that had been debited, then credited and then debited again; he also identified payments that had been debited to his account.

15. The tribunal was not able to fully understand the running account, and issued further directions, that are included within this decision.

Analysis of invoices and expenditure:

16. We have analysed the expenditure set out by Mr. Atarid and have made the deductions identified on the Excel spreadsheet attached to this decision, and which forms the basis of our final decision in relation to payability. However, the spreadsheet provided amounts to £42,905.00 and does not include the on-account payment, and some other expenditure. It must therefore be assumed that those items of expenditure not identified by Mr. Atarid are accepted and are payable in full. The applicants will have to amend the respondent's account to take account of these adjustments which hopefully can be agreed.

The Applicant's case:

17. Mr. Gibson accepts that some of the supporting documentation is missing but says that works were carried out and were carried out to a reasonable standard. He accepts that he is unable to assist the tribunal in some matters.

The Respondent's case:

18. Mr. Atarid disputes liability for the following items: -

- a) 2015: Mr. Atarid says that he has not been provided with any evidence of expenditure in relation to repairs and maintenance. We have not been provided with any receipts or invoices for these works, but are satisfied that some work was carried out. Without invoices we are prepared to allow 50% of the amount claimed for repairs and maintenance in 2015.
- b) Cleaning: He says that this work is rarely carried out, and that he visits the property on a regular basis and can see that it is not cleaned sufficiently. He accepts that the cleaners do turn up occasions but says that 25% of the sum claimed is payable. We understand from the papers that this development has very little in the way of common parts that require cleaning. We find, on balance the amount claimed to be too high, and we allow **£300.00 per month** for all of the years in question, except 2015, with the result that Mr. Atarid is liable for **£32.64 per month in cleaning, £391.00 per annum.**

- c) Gardening: Mr. Atarid said the gardeners do not turn up and when they do, they leave grass cuttings in the car park/garden areas. Hedges are not well maintained and grow under and over his roof, which he gets attended to at his own expense. He suggested a contribution of 10% would be sufficient to cover his liability. We accept that some gardening is carried out, but without evidence from the applicants of what work is carried out and at what intervals, are unable to award the full sum. Mr. Atarid accepts some liability but we consider his offer to be too low. We allow **50%** of the gardening costs for all of the years.
- d) Fire Protection: the costs for all fire related works, alarms, testing etc is accepted by Mr. Atarid and he is therefore liable for these costs. **Allow in full.**
- e) Water: Mr. Atarid said that there had been a water leak in the car park for at least 10 years and this had only been identified and rectified in 2018. He accepted that a credit for water had been applied for 2019 but said that this was insufficient and requested a 50% reduction in water charges for the period. We have no information from the applicants regarding the cause of the leak or how the credit was calculated by Thames Water. In the circumstances, we find that a **50%** reduction of the net balance (after the credit) should be applied to Mr. Atarid's account.
- f) Access gates: Mr Atarid said that the main gate had never been connected to its entryphone system and that it was necessary for visitors to call the individual flats and obtain the entry code and then the gates could be opened. He accepted the pedestrian side of the gate worked properly. He said therefore he should not bear the costs of gate repairs. He accepted that the fobs had been replaced and that there was some maintenance, but he disputed other costs. We are satisfied that the gates had a standard contract, that the fobs had been replaced and that the gates required attention from time to time. Mr. Atarid confirmed that the entryphone had never been connected and we cannot therefore see that he has 'lost' a service. We there allow all of the sums claimed for the gates. **Allow all.**
- g) Insurance: Mr. Atarid accepted that two blocks were being covered by the insurance and not three as he had first assumed. **Allow all.**
- h) Reserves: Mr. Atarid accepted that that reserves had been collected, but said that as these had not been used, no more should be collected. We consider that the reserves will be spent at some time during the lease and that a contribution of £15,000.00 per annum for the building would be reasonable. **Allow all.**
- i) Carpet cleaning: allow those sums in the Mr. Atarid suggested that the carpets were shampooed more than they were hoovered and that this cost was unreasonable. We are not persuaded by his argument and consider that carpets would need cleaning annually and this is what has been charged. We allow this claim in full. **Allow all.**

j) Battery and Inverter: Although Mr. Atarid considered this to be an insurance item, we are not persuaded that it was. The pump failed and required additional work. We therefore allow in full the cost for the pump replacement. **Allow all.**

k) Damaged carpet (by damaged pump). Mr. Atarid said that the water pump failed causing water to flood into the common parts and damaging the carpets. He considers that this is an insurance item and a claim should have been made. We find this to be an insurable risk and the applicants should, if possible, make a claim. If the level of excess is too high, then we find this item to be service chargeable.

l) Repairs to coping stones: It was not disputed by Mr. Atarid that these required attention, but he said that no scaffold was required, and he considered that the cost should be between £1800.00 and £2000.00, We have no evidence that the works could have been carried out at a lower cost, and therefore we allow this part of the claim in full. **Allow all.**

m) Pest control: Mr Atarid said the only reason pest control was required was because the gardeners did not clear up after themselves properly. We have no evidence that this was the case and allow this sum in full. **Allow all.**

n) Rubbish removals: Mr. Atarid said that the majority of rubbish removals was due to the gardeners again not clearing up after them; he did accept that occasionally the bin stores were full of rubbish. Mr. Gibson suggested that because many of the flats were sub-let that there was bound to be some rubbish in the common parts as tenancies changed. We are persuaded by Mr. Gibson's argument and our own experience of blocks which are largely tenanted. It is not unusual for rubbish to accumulate in common parts and therefore allow the sum as claimed in full. **Allow all.**

o) Roof works: Mr. Atarid did not suggest the works had not been carried out, but says the amount claimed is too high, and should have been allocated to general maintenance. We have no evidence to suggest the works were not done to a reasonable standard, and although criticisms could be made of the way in which the breakdown of accounts is presented, this does not, in our view, make the sum claimed not payable. We allow the cost in full. **Allow all.**

p) Health and safety: This is agreed by Mr. Atarid and is therefore payable. **Allow in full.**

q) Late payment fees: Mr. Atarid said that these were not payable. It appears from the bundle that the agents charge the management company when they fail to pay on time. This is outside the control of the respondent and is a very unusual situation. In our experience a managing agent would not charge their principal fees, unless they were

specially entitled to do so under the management agreement. In any event, we find that these are not payable by the respondent and disallow them in full. **Disallow in full.**

r) Management fees: Mr. Atarid said the fees (£364.00 per unit) were excessive given the poor management of the property historically. He did accept that things were getting better under the new agents, but said that in the past the various managers had not attended to problems on site, did not do repairs when required and that an RICS report produced in relation to the purchase of a flat, but not exhibited, demonstrated a lack of maintenance over the years. We did not have this evidence before us and therefore cannot take it into consideration. Mr. Atarid also said that the managers failed to carry out any works to his flat and that he was constantly using his own contractors to maintain the property, including carrying out gardening works. He suggested that £260.00 per unit would be a reasonable sum. We have considered the evidence before us and find that in the years in question, the buildings were not satisfactorily managed and that an annual management fee of £6,500.00 (£260.00 per unit) would be reasonable and payable. We allow this sum **£6,500.00 per annum allowed.**

s) Legal Fees: The applicants claim £10,641.40 in legal fees in relation to this matter. Copies of various invoices have been supplied in evidence to support the claim. These invoices are not specific, they do not show whether the sums claimed relate to litigation in this matter or not. It also appears that professional fees includes late payment fees, that we have already disallowed. Finally, at page 471, the invoice relates to service charge recover in relation to Flat 4, which should be a cost directly payable by that leaseholder and not part of the service charge. Because of this lack of transparency, we disallow all of the legal fees claimed. **Disallow all.**

t) Estimated charges for 2019: The actual expenditure for this year has not yet been provided to Mr. Atarid. The financial year ended on 31 December 2019, and therefore we can only allow the estimated costs in full. Mr. Atarid retains the right to challenge this expenditure if he considers it to be unreasonable when those accounts are produced. **Allow estimated for 2019 in full.**

S.20C and Paragraph 5 to Schedule 11 Applications:

19. Mr. Atarid demonstrated to the tribunal that on more than one occasion he had sought mediation of this matter and had tried to resolve issues before they came to the tribunal. In the circumstances, and although he has not succeeded on all accounts, we make an Order under S.20c of the Landlord & Tenant Act 1985 preventing the landlord from putting the costs of these proceedings on the service charges.

20. In addition, we consider that an Order under Paragraph 5 to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 should be made, and the landlord may therefore not recover any costs of these proceedings from the respondent.

Further Directions:

21. In order to reconcile the cash account and determine the liability of the respondent, the applicants shall **on or before 10 February 2020** supply to the respondent a full break-down in chronological order of all credits and debits on his cash account since the previous tribunal decision, and showing account for all adjustments resulting from that decision.
22. The respondent shall **on or before 24 February 2020** supply to the applicant a statement setting out any discrepancies in the account and provide details of any other payments not accounted for.
23. The parties shall provide to the tribunal **on or before 9 March 2020** with their statements of case/reply and copies of all documents on which they rely in support of any discrepancies in the cash account. The tribunal will determine the status of that account on the papers provided as soon as possible thereafter.

Tribunal: Ms. A. Hamilton-Farey

Date: 12 February 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).

Schedule of invoices and expenditure:

<u>Page</u>	<u>Company</u>	<u>Amount</u>	<u>Allowed</u>	<u>Disallowed</u>	<u>Reasons</u>
195	Rynew	175		175	Voided invoice
212	CSL	456	456		Reasonable and payable.
221	Brethertons	1470		1470	Not payable LL non compliance with previous tribunal decision.
222	Rendell & Ritner	840		840	RR had resigned, not evidence of payment.
221	A & F Solutions	60		60	Relates to works in a flat
222	A & F Solutions	60		60	Relates to works in a flat
231	A & F Solutions	280	280		
236	A & F Solutions	480	480		
462	A & F Solutions	120		120	
238	ACTEST	99	99		
241	A & F Solutions	1991		1991	Already invoiced £650.00, relates to works prior to inspection?
242	A & F Solutions	650	650		Referred to above, allowed.
269	Stonehouse	2832	2832		
271	A & F Solutions	3050	3050		
345	Rynew	140		140	Not service charge relates to individual flat
347	Rynew	234		234	Not service charge relates to individual flat
348	Steven Heard	600		600	Not service charge relates to individual flat
349	Rynew	660		660	Late payment charges not reasonable
351	Rynew	396		396	Late payment charges not reasonable
352	Rynew	40		40	Payment plan charges should be to individual.
358	ACTEST	1556.71	1556.71		
359	A & F Solutions	84		84	Access available without contractor
364	A & F Solutions	360	360		
366	ACTEST	403	403		
367	ACTEST	491.55	491.55		
368	A & F Solutions	360	360		
369	A & F Solutions	216	216		
370	A & F Solutions	111	111		
371	ACTEST	128.18	128.18		
372	A & F Solutions	158.4	158.4		

373 Deco Painting	7570		7570	Not service charge relates to individual flat
390 ACTEST	135.78	135.78		
393 JM2	216	216		
394 JM2	66	66		
395 JM2	300	300		
397 JM2	114	114		
410 Elite Environmental	942	942		
415 A & F Solutions	2772	2772		
468 A & F Solutions	672		672	Insurance claim
469 A & F Solutions	1740		1740	Insurance claim
470 A & F Solutions	2496		2496	Insurance claim
475 A & F Solutions	273.6		273.6	Not service charge relates to individual flat
503 Habicrae	300		300	Part of management fee.
504 PM Legal	3360		3360	Disallowed
507 Elite Environmental	989.1	989.1		
517 A & F Solutions	816		816	Insurance claim
518 A & F Solutions	204		204	Charge to Thames Water due to leak.
519 A & F Solutions	288		288	Charge to Thames Water due to leak.
520 A & F Solutions	84		84	Charge to Thames Water due to leak.
530 ACTEST	1064.71	1064.71		
Totals:	42905.03	18351.43	24553.6	