FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Central London, sitting at 10 Alfred Place, London WC1E 7LR

Case reference	**:**	**LON/00BG/LSC/2020/0083**
County Court Claim Number		**F14YX082**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	**:**	**4 Market Square, London E14 6AQ**
Applicant	**:**	**Poplar Housing and Regeneration Community Association Ltd**
Representative	**:**	**Mr J Fieldsend of counsel**
Respondent	**:**	**Mr I Marcu**
Representative	**:**	**Mr N Uddin of counsel**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge S Brilliant** **Ms A Flynn MRICS**
In the County Court	**:**	**Judge S Brilliant (sitting as a District Judge of the County Court)** **Ms A Flynn MRICS (sitting as an Assessor)**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**10 March 2021**
Date of decision	**:**	**04 May 2021**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the "Hand Down Date" which will be:

(a) if an application is made for permission to appeal within the 28 day time limit set out below - 2 days after the decision on that application since this decision was sent to the parties; or

(b) if no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in the landlord's bundle of 771 pages, together with the tenant's bundle of 58 pages.

Summary of the decisions made by the tribunal

1. The following sums are payable by the Respondent/Defendant ("the tenant") to the Applicant/Claimant ("the landlord") by 4.00 PM 02 June 2021:

(i) Service charges: £35,474.99.

Summary of the decisions made by the County Court

2. The following sums are payable by the tenant to the landlord by 4.00 PM 02 June 2021:

(ii) Interest on the above sums: £3,525.14 until 10 March 2021 and thereafter at the rate of £2.92 per day until payment of the above sum.

(iii) Legal costs: £3,693.61.

Background

3. The landlord issued proceedings with a Particulars of Claim against the tenant on 06 February 2019 in the County Court Money Claims Centre under claim number G12YX158 for arrears of service charges. The tenant filed a Defence on 15 April 2019. The tenant did not deny that some money was owing. In paragraph 9 he said that he agreed to pay a contribution towards liability, subject to the explanation and proper particularisation of the liability of the claim. Importantly, no point was taken about a failure to comply with the consultation process.

4. In paragraph 7 he took issue with the payment of 8 particular items. On

16 September 2019, the proceedings were transferred to the County Court at Central London. On 14 January 2020 the proceedings were transferred to this tribunal by an order of HH Judge Saggerson. This case was allocated to the Fast Track.

5. The tribunal issued directions on 28 February 2020, which were varied on 20 October 2020. Importantly, the landlord was ordered to deliver a Statement of Case in response to the specific issues raised in paragraph 7 of the Defence. No directions were made about the consultation process because the issue had not been raised in the Defence.

The hearing

6. The matter duly came to a remote hearing on 1 February 2020. Mr J Fieldsend of counsel appeared for the landlord. Mr N Uddin of counsel appeared for the tenant.

7. At that hearing we were told by Mr Uddin that the tenant had a short time ago suffered a reaction to the Covid 19 vaccination he had recently had. He made an application for an adjournment to which Mr Fieldsend very properly did not object. We required evidence of the vaccination to be provided to us within seven days, and this was done.

8. The hearing was adjourned to 10 March 2021 at which Mr Fieldsend again appeared for the landlord. Mr Uddin again appeared for the tenant. Mr Fieldsend called Mr Matthew Mitchell, a Home Ownership Officer employed by the landlord. Mitchell had made a witness statement dated 21 December 2020. Mr Uddin called the tenant. The tenant had made a witness statement dated 18 December 2020.

The flat

9. Market Square London E14 68Q is a development in Docklands which consists of five mixed used blocks, together known as The Festival Blocks. The development is named after the Festival of Britain which was opened on 4 May 1951. The subject property is a first and second floor maisonette with a mansard addition ("the flat"). The flat is in a block known as 1–7 Market Square ("the block").

10. The tenant holds a long lease of the flat dated 7 December 1998 for a term of 125 years from 01 December 1997 ("the lease"). It was originally a right to buy lease. On 09 June 2006, the reversion was assigned to the landlord. The tenant purchased the residue of the term on 07 September 2006. Only three of the seven flats in the block are privately owned on long leases.

11. The lease requires the landlord to provide services and for the tenant to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The proceedings

12. The claim against the tenant in the County Court comprised the following:

    (i) Service charges amounting to £35,474,99.

    (ii) Statutory interest.

    (iv) Statutory legal costs of the proceedings.

13. The order transferring issues to the tribunal was as follows:

1. The claim be transferred to the [tribunal] to determine the issues raised in the Defendant's Defence dated 15 April 2019, namely that the Defendant is not liable to pay certain Major Works undertaken by the Claimant, and the Defendant denies certain works being undertaken by the Claimant.

14. It was in response to this specific reference to the determination of the issues raised in the Defence, that the tribunal made the directions set out in paragraph 5 above.

15. All tribunal judges are now judges of the County Court. Accordingly, where tribunal judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.

16. Accordingly, Judge Brilliant presided over both parts of the hearing, which has resolved all matters before both the tribunal and the court. The tribunal member, Ms A Flynn sat as such in respect of those matters falling within the jurisdiction of the tribunal. She also sat as an assessor assisting me in the those matters falling within the jurisdiction of the County Court.

17. This decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The lease

18. By clause 4.4 of the lease the tenant covenanted to:

Pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such Charges to be recoverable in default and rent in the rear

19. The fifth schedule to the lease requires the tenant to pay a proportion of the landlord's expenditure incurred in keeping the block in repair in accordance with its repairing obligation to be found in clause 5.5.1 the lease. This clause is set out in its entirety in appendix A to this decision. In summary, the services which the landlord is under an obligation to provide include such matters as structural repairs to and decoration of the block, the common parts, and boundary walls and fences. There is no suggestion by the tenant (except in the case of refurbishment of balconies) that any of the works charged for fall outside the scope of clause 5.5.1.

The application to amend

20. A few days before the adjourned hearing, the tenant applied to amend the Defence to plead a failure to comply with the consultation requirements. This application was refused for the reasons set out in my ex tempore judgment which was recorded. Apart from being made far too late, the plea contained in the amendment was bound to fail. There was substantial evidence that the requirements had been met. Moreover, as Mr Uddin candidly admitted he could not show there had been any prejudice as a result of any failure to comply with the consultation requirements, the landlord was bound to obtain a dispensation in any event.

The service charges: overview

21. The claim relates to major works carried out at the block by the landlord in 2013 ("the works") We found Mr Mitchell a very helpful witness, who explained the substantial documentation relating to the works in the bundle. The claim for service charges relates to the cost of major works carried out by the landlord to the block as far back as 2013. The works were awarded to Fairhurst Ward Abbotts following a competitive tendering exercise. There was a pricing breakdown for each of the five blocks (page 464). The final account is at page 658 and it has been paid.

22. The total cost of the major works in the block was £277,155[1]. There is a schedule at pages 82-83 of the bundle showing the breakdown ("the spreadsheet"). Column B refers to each item of work carried out. Column F refers to the full cost of each item of work. Column G refers to the percentage of the cost charged back to the tenants. This is usually 100%. However, in certain instances the landlord only charged 50% of the cost or none at all. Column J sets out the cost of each item recharged to the lessees (as opposed to the tenants).

23. The contributions are based on the proportion that the floor area of the flat bears to the floor area of the block. There is no pleaded case that this is an unfair proportion, or that an unfair proportion has been adopted.

24. The total floor area of the block is 466 m². The floor area of the flat is 65 m². This results in a charge of 13.95%. There is no pleaded case that this is an inaccurate calculation. However, the tenant alleges that he has been charged almost 32%. Mr Mitchell explained that this was because the tenant did not understand the different Columns in the spreadsheet, and he showed how the correct percentage was being applied. The tenant's share of the cost worked out on the correct basis amounts to £31,674.

25. On top of this the landlord has charged an additional 12% for management and administration services provided in connection with the works. These services include the clerk of works, project managers, the in-house technical team, the service of statutory notices, the calculation and billing of the relevant service charge, and dealing with any queries.

26. Accordingly, the total amount being charged to the tenant is £35,475.

27. Mr Mitchell took us to four important documents setting out the underlying figures:

(a) Employer Requirements of the External Enhancement and Repair Works ("the Requirements").

(b) JCT contract with Fairhurst Ward and Abbott.

(c) Pricing Documents.

(d) Baily Garner Final Account.

28. The works which the tenant challenges are as follows:

(a) Refurbishment of balconies.

[1] The figures are given without pence for the sake of simplicity, although the judgment sum does include pence.

(b) Pitched roof.

(c) Windows and garden balcony doors.

(d) External and communal doors.

(e) Dwelling entrance.

(f) Communal floors and entrance.

(g) Refuse system.

(h) Communal cold water tank.

Refurbishment of balconies

29. The tenant says that the work undertaken on the balconies was unrelated to the schedule of costs. The work was undertaken to remedy the water leakage in the shops at the ground floor and the slabs were replaced within the period of warranty. The work was covered under the building insurance and the tenant contributes towards the premium insurance. In any event, this was remedial work outside the scope of the claim. There was no need to replace the slabs as they had only been down a few years.

30. The landlord says that the cost of this work was £56,640. The tenant's contribution is £7,900. The work carried out was in respect of repairs to the communal way, which is located over the ground floor shops, and provides access to the flats at first floor level. The works comprised planned works which were not covered under a warranty or building insurance. The tenant had not pleaded any case that there was no need to replace the slabs as they had only been down three years

31. In reply, the tenant says that the landlord has failed to provide any evidence of what this would actually entail, when this work was carried out, why it was deemed necessary, the breakdown of the cost in terms of labour and material, and any evidence that he was consulted and in agreement.

32. In his evidence Mr Mitchell confirmed that the works for the refurbishment of the balconies was carried out as set out in section 3.2 of the Requirements (page 252).

33. We are satisfied that the landlord was entitled to do this work and the cost of the work of £7,900 is recoverable from the tenant.

Pitched roof

34. The tenant says that he had previously converted the loft. He does not understand what this work is. He had not witnessed any work undertaken on the roof which could be categorised as a pitched roof.

35. The landlord says that the cost of this work was £54,568. The tenant's contribution is £7,611. Work was carried out to the pitched roof of the block. The entire roof was retiled and the waterproofing of the roof was repaired. The photographs show this.

36. In reply, the tenant says that the landlord has failed to specify and provide evidence of when the work to the pitched roof was carried out, how long it took, why it was deemed necessary, how the cost was calculated for the work and when, if at all, the tenant was consulted.

37. The works to the pitched roof are in fact set out in section 3.3 of the Requirements (page 254).

38. We are satisfied that the landlord was entitled to do this work, the work was done and the cost of the work of £7,611 is recoverable from the tenant.

Windows and garden balcony doors

39. The tenant says that he wants evidence of the work claimed and of the relevant costs. He disputes any work was undertaken on the windows and garden balcony doors.

40. The landlord says the cost of this work was £10,472. The tenant's contribution is £1,461. This work was carried out. The work comprised repair of (and replacement where appropriate to) existing windows as required, for example (but not limited to) fastenings and fixings, and frame sealant.

41. In reply, the tenant says that the landlord has failed to provide evidence of the work. He says that is inadequate simply to state that the work was carried out without producing any evidence of it.

42. The works to the windows in garden balcony doors are in fact set out in section 3.7 of the Requirements (page 268).

43. We are satisfied that the landlord was entitled to do this work, the work was done and the cost of the work of £1,461 is recoverable from the tenant

External and communal doors

44. The tenant says that there are no external and communal doors in the block. He therefore denies any work was carried out or the costs claimed for such work.

45. The landlord says that the cost of this work was £3,760. The tenant's contribution is £520. The work was carried out. It consisted of the provision of new metal framed entrance or enclosure doors and screens to the existing public access staircases in the block. Also, the provision of a new metal door and frame to the electrical intake room (from which electricity is distributed throughout the block).

46. The works to the external communal doors are in fact set out in section 3.9 of the Requirements (page 278).

47. We are satisfied that the landlord was entitled to do this work, the work was done and the cost of the work of £520 is recoverable from the tenant.

Dwelling entrances

48. The tenant denies any work was undertaken by the landlord on the dwelling entrances, and requires evidence from the landlord about this.

49. The landlord says the cost of this work was £11,876. The tenant's contribution is £1,656. The work was carried out. The doors are not demised tenants. The work comprised the replacement of the front entrance door to each of the flats in the block still owned by the landlord and let out to tenants.

50. In reply, the tenant says that the landlord has failed to state when the front door to each of the flats in the block was replaced. He denied the doors were replaced. The landlord has failed to provide any evidence to show the work

was carried out.

53. The works to the dwelling entrance are in fact set out in section 3.10 of the Requirements (page 279). One can understand the tenant's disquiet that he has to pay for the doors of some of the other flats when his own one has not been replaced. Nevertheless, the lease enables the landlord so to charge.

54. We are satisfied that the landlord was entitled to do this work, the work was done and the cost of the work of £1,656 is recoverable from the tenant.

Communal floors and entrance

55. The tenant disputes any work was undertaken on the communal floors and entrance.

56. The landlord says the cost of this work was £3,236. The tenant's contribution is £451. The work was carried out. The work comprised (1) a quarry tiled finish to the ground floor entrance lobby, (2) application of a proprietary coating system to the communal stairs, and (3) an overhaul and repair of the staircase, balustrade and handrail.

57. In reply, the tenant disputes such work was carried out. The landlord has failed to provide any evidence of this work, nor has it justified the cost of the work with a full breakdown.

58. The works to the communal floors entrance are in fact set out in section 3.11 of the Requirements (page 280).

59. We are satisfied that the landlord was entitled to do this work, the work was done and the cost of the work of £451 is recoverable from the tenant

Refuse System

60. The tenant says that he disputes these charges.

61. The landlord says the cost of this work was £5,255. The tenant's contribution is £733. The work was carried out. It consisted of the refurbishment and overhauling of the existing refuse facility.

62. In reply, the tenant denies that this work ever took place and says that the landlord has failed to provide any evidence of it. In his oral evidence he accepted that the work being done, but his view was that it had been a better facility before.

63. The works to the refuse system are in fact set out in section 3.13 of the Requirements (page 283). Mr Mitchell explained that previously there had been no designated spaces for bins. A new cage area was formed, and there was an overhaul to be existing system and refurbishment.

64. We are satisfied that the landlord was entitled to do this work, the work was done and the cost of the work of £733 is recoverable from the tenant

Communal cold water tank

65. The tenant says that he was not aware of the existence of any communal cold water tank in the building.

66. The landlord says that the cost of his work was £736. The tenant's contribution is £103. The work was carried out. It comprised the insulation of

the cold water mains throughout the block.

67. In reply, the tenant says again that he is unaware of a communal cold water tank for the block. The land has failed to provide any schedule of works to evidence this work or to say where there tank is located.

68. In his evidence Mr Mitchell explained that whilst the tenant had his own water tank in his loft extension, all the other flats was serviced by cold water tanks in the communal area. Also the water pipes in the communal areas all supply water to the flat.

69. We are satisfied that the landlord was entitled to do this work, the work was done and the cost of the work of £103 is recoverable from the tenant.

Particularising the cost

70. In paragraph 3 of his statement of case, the tenant also says that the landlord has failed adequately to particularise any of the charges. He cannot reasonably be expected to pay for something regarding which the landlord is unable to provide any evidence.

71. In particular, he wants to know (1) the date each piece of work was carried out, (2) how long the work took, (3) the cost of labour, (4) the cost of materials, (5) whether the tenant was consulted before the work commenced, (6) whether the tenant agreed to the work, (7) evidence of any consultations that took place, (8) whether any objections were raised, and if so, when and by whom, (9) whether the work was necessary and the cost proportionate, and (10) what steps were taken to ensure that the cost of the work was competitive and the market rate for such work.

72. In his witness statement, the tenant denies having received any consultation notices or pre-action protocol letter.

73. In paragraph 15 of his witness statement, Mr Mitchell said that these are all issues raised beyond those raised in the Defence. We agree. It will be recalled that the order transferring these proceedings to the tribunal was in order *to determine the issues raised in the Defendant's Defence dated 15 April 2019*. The directions given by the tribunal make it quite clear that the landlord's statement of case was to be in response to the specific issues raised in paragraph 7 of the Defence. These are the eight matters set out in paragraph 23 above.

73. If the tenant had wished to take these generic points set out in paragraphs 70-72 above he should have sought a specific direction to that effect, or have sought to amend the Defence in good time. As I have said, permission to amend the Defence was refused at the resumed hearing.

74. Nevertheless, Mr Mitchell says that the tenant had been provided with a breakdown of the costs and copies of the relevant consultation documents. These are at pages 152 and following in the bundle. On the balance of probabilities, our view is that he was so provided.

The copy of the lease

75. The tenant says that the copy of lease in the bundle has not been executed or dated. There is nothing in this point.

The management and administration charge

76. The tenant says that there is no evidence that he agreed to pay the additional 12% (this is not a point taken in the defence). In our judgment, this is part and parcel of the works and the landlord is entitled to charge for this sum.

77. Despite Mr Uddin saying everything that could be said on behalf the tenant, we are driven on the evidence to find in favour of the landlord in every item.

Statutory Interest

78. The landlord submitted a rate of 4% was appropriate. The tenant said it should be 2%. We will award at 3%.

Legal costs

79. Mr Fieldsend was asked if the landlord was seeking to recover contractual costs or statutory costs. He replied statutory costs.

80. The landlord has provided cost schedules to the tribunal. A draft decision was handed down asking the tenant within 14 days of receipt to provide to the landlord and the tribunal any objections to or representations about the costs claimed. The tenant did not do so.

81. As the Judge of the County Court, I have to decide to what statutory costs the Applicant is entitled. Mr Fieldsend very properly referred me to the decision of the Mr Martin Rodgers QC in John Romans Park Homes Ltd v Hancock (2019) County Court, which decided that the costs incurred in the tribunal were neither costs of the proceedings in the County Court nor costs incidental to proceedings in the County Court, and were therefore not recoverable under s.51 Senior Courts Act 1981.

82. I therefore allow the landlord costs of £3,693.61, being its specific County Court costs.

83. Given that the tribunal has made a decision regarding the service charges, the landlord is entitled to a judgment in that sum. A separate County Court order, reflecting this decision is attached.

Name: Judge Brilliant: Date: 04 May 2021

Schedule A[2]

5.5.1 To maintain and keep in good and substantial repair and condition:

5.5.1.1 The main structure of the Building including the principal internal times and the exterior walls and the foundations and the roof thereof with is main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other flat in the Building

5.5.1.2 All such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of

[2] The numerous spelling mistakes have not been corrected.

this Lease be enjoyed or used by the Lessee in common with the owners or tenants of the other flats in the Building

5.5.1.3 The Common parts

5.5.1.4 The boundary walls and fences of the Building

5.5.1.5 The flat or flats or accommodation whether In the Building or not which are occupied or used by any caretakers porters maintenance staff or other persons employed by the Lessors in accordance with the provisions of Clause 5.5.6 hereof

5.5.1.6 All other parts of the Building not included in the foregoing sub-paragraphs (5.5.1.1) - (5.5.1.5) not included in this demise no included in the demise of any other flat or part of the Building and not let or intended for letting

5.5.2 As and when the Lessors shall deem necessary:-

5.5.2.1 To paint the whole of the outside wood iron and other work of the Building heretofore or usually painted and grain and varnish such external parts as have been heretofore or are usually grained and varnished

5.5.2.2 To paid varnish colour grain and whitewash such of the interior parts of the Building as have been or are usually painted papered coloured grained and whitewashed (other than those parts which are included in this demise or in the demise of any other flat in the Building)

5.5.2.3 To paint paper varnish colour grain and whitewash such of the parts of any flat or flats or accommodation occupied or used by any caretakers porters maintenance staff or other persons employed by the Lessors in accordance with the provisions of Clause 5.5.6 hereof as have been or are usually painted papered varnished coloured grained and whitewashed

Rights of appeal

Appeals in respect of decisions made by the FTT

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).

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.
Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.
Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.