



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

**Case reference** : **LON/00AN/LSC/2021/0115**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPERREMOTE**

**Property** : **112 Askew Road, London W12 9BL**

**Applicants** : **(1) Mr. Alex Gordon and Ms Lolita  
Laguna Crespo  
(2) Mr. Vas Hava**

**Representative** : **N/A**

**Respondent** : **Mr. Sunil Patani**

**Representative** : **N/A**

**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 H Carr  
Ms A Flynn**

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

**Date of decision** : **2nd August 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing/on paper. The documents that I was referred to are in a bundle of 100 pages, the contents of which I have noted. The order made is described at the end of these reasons.

## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £507.01 is payable by each of the Applicants in respect of the service charges for the years 2019 – 2020 which are challenged by the Applicants.
- (2) The tribunal determines that the sum of £ 300 is payable by each of the Applicants in respect of the estimated service charges for the years 2020 – 2021.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The tribunal makes an order under section 20C of the Landlord and 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]
- (5) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years

## **The background**

2. The property is a Victorian mid- terrace building on lower ground , ground floor, two upper floors and attic level. The property has been converted and comprises three residential flats, flats A, B and C, and commercial premises. Flats A and B are situated on 1st and 2nd plus attic floors respectively. Flat C is a single- storey structure attached

to the main building with entrance from the rear and also access from the front of the building to the exterior through the common parts.

3. At the time of the service charge demands Flat C was owned by the Respondent. The Respondent has subsequently transferred the freehold title to
4. This application is one of three applications in relation to the property. The tribunal determined an application for the Appointment of a Manager on 28th April 2021. The third application, for variation of a lease, is ongoing.
5. A previous application is also relevant to the determination of this matter. There was a tribunal hearing on 23rd September 2019 case reference LON/00AN/LAM/2019/0016. This was an application for the Appointment of a Manager. It appears that the tribunal was not able to proceed as the application named a company instead of an individual as manager, but that in any event a settlement was reached between the parties. Some of the disputed costs being determined in this application relate to that settlement.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The applicants hold long leases of the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for 2019 – 2020 relating to
    - a. Legal fees demanded of £1500
    - b. Solicitors' fees for changes to the lease - £600
    - c. Fire Risk Assessment - £150
    - d. Hallway works (fitting of emergency lighting) - £235
    - e. Insurance Premium - £282.57
    - f. Electrical Inspection and Testing - £37.50

- (ii) The payability and/or reasonableness of service charges for 2020 – 2021 relating to estimated demand for insurance premium of £300

- 9. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

**Legal fees of £1500 per applicant**

- 10. The applicants argue that the legal fees were charged to them relate to representation that the respondent organised for a previous tribunal hearing which concerned the Appointment of a Manager. They say that the clause in the lease, paragraph 4 of the 3rd Schedule does not cover these legal costs.
- 11. The respondent says that paragraph 4 of the Third Schedule covers these charges.

**The tribunal's decision**

- 12. The tribunal determines that the amount payable in respect of legal fees is £00.00 .

**Reasons for the tribunal's decision**

- 13. Paragraph 4 of the 3rd Schedule provides as follows:

To pay unto the Lessor all costs charges and expenses including legal costs and fees payable to a Surveyor which may be incurred by the Lessor in or in contemplation of any proceedings under Section 146 and 147 of the Law of Property Act 1925 or any statutory modification thereof which may for the time being be subsisting notwithstanding forfeiture be avoided otherwise than by the Court granting relief under the said Act and to pay all costs and expenses incurred (including Solicitors and own client costs and surveyors fees) in recovery or attempting to recover all sums payable by the Lessee under these presents whether or not proceedings of any nature are commenced in respect of the same and in connection with any application by the Lessee hereunder.

- 14. The tribunal notes the breadth of the clause and that it includes the phrase 'any application by the Lessee hereunder'.
- 15. However the tribunal determines that the word hereunder limits the costs clause to the type of application anticipated in the clause, ie

forfeiture proceedings and applications for recovery of sums payable by the Lessee and does not apply to an application for the Appointment of a Manager.

16. This is because the clause requires to be interpreted narrowly and where there is doubt in favour of the party that did not draft the contract and should not be construed so broadly as to limit the applicants ability to access their statutory rights unless the clause clearly covers those rights.

### **Solicitors' fees of £600**

17. The applicant argues that these sums are not payable under the service charge provisions. They say that it was agreed at a previous hearing of the applicants' Appointment of a Manager application that the landlord would arrange for the leases to be amended and that the applicants would be billed for that through the service charges. However they say that the landlord arranged for his solicitor to contact the applicants directly and demand money directly to amend the leases. The applicants did not pay and therefore the leases were never amended.
18. The respondent argues that the agreement was that the leaseholders would pay for the changes to the lease directly with the lawyers due to the lack of payment of service charges. He considers that the leaseholders are determined to avoid making payment to him which is why they are challenging the payment.

### **The tribunal's decision**

19. The tribunal determines that the amount payable in respect of solicitors fees for the variation of the leases is £00.00 .

### **Reasons for the tribunal's decision**

20. The tribunal does not consider that this charge is a valid service charge under the lease.
21. Moreover the tribunal accepts the version of events provided by the applicants. It is more credible that they would have agreed for the leases to be amended and then be billed for that through service charges rather than they would agree to pay the lawyers for the respondent directly.
22. The leases have not been varied therefore the monies are not payable.

### **Fire risk assessment of £150**

23. The applicants say that the fire risk assessment is for the benefit of all four owners/leaseholders of the building.
24. They argue that therefore the fire risk assessment should be split four ways. The demand in question is only being charged to Flats A and B and would agree to pay costs of £75 per applicant.
25. Neither the commercial lease nor Flat C existed when they purchased their leasehold interests.
26. They point to the following clause of their leases
  - (i) "That the Lessor will not hereafter grant a lease of any other flat in the Property except to a lessee who has entered or will enter into similar covenants and undertake similar obligations to those on the part of the Lessee herein contained so far as applicable and that the Lessor will be under like obligations in respect of any other flat in the Property for the time being not so leased."
27. The respondent says that the leases clearly state that the share of costs of each of the leaseholders is as provided in the lease
  - (i) "Maintenance Rent: One third part of the costs and expenses of the Lessor in complying with its obligations under Part 1 of the Second Schedule and one half part of the costs and expenses of the Lessor in complying with its obligations under part II of the Second Schedule."
28. The respondent considers that unless the lease is varied the costs apply as they are billed. The lease does not accommodate any discounts in costs and therefore the full charge applies.
29. He says that the clause the applicants refer to would mean that Flat C would pay the same amount as Flats A and B and the additional monies would be used to defray expenses.

### **The tribunal's decision**

30. The tribunal determines that the amount payable in respect of fire risk assessment is £75 per applicant.

### **Reasons for the tribunal's decision**

31. The tribunal accepts that the lease requires costs to be divided between the applicants on 50/50 basis.

32. However it is not reasonable for the applicants to pay costs relating to the commercial premises and Flat C when the respondent is directly benefitting from the commercial rent and the rent from the private residential tenant of Flat C. This is particularly so when the respondent organised the lettings subsequent to the applicants' purchase of their properties.
33. The tribunal rejects the argument of the respondent that even if Flat C was paying its share that would not result in a reduction of the applicants' service charges as the result of this would be service charges totalling more than 100%.

### **Emergency lighting costs of £235**

34. The applicants say that it was agreed at the original hearing of the AOM application that the landlord would commission a Fire Risk Assessment and carry out the recommended works utilising the statutory consultation procedure.
35. They do not understand why the landlord chose to split the work from the remainder of the required work and bill it at just under the s.20 limit.
36. The respondent says that some urgent repairs were carried out and billed for which he was in his rights to do. Whether the works were carried out as part of a s.20 notice or not, the works would still be payable.

### **The tribunal's decision**

37. The tribunal determines that the amount payable in respect of the emergency lighting costs is £235 per applicant. .

### **Reasons for the tribunal's decision**

38. The tribunal understands the concerns of the applicants, that by disaggregating these works from the rest of the required works they were deprived of their statutory consultation rights, in particular the rights to nominate contractors.
39. The tribunal notes that the works were carried out by a close relative of the respondent.

40. However the applicants have not provided any argument or evidence to suggest that the works were not carried out to a reasonable standard or any other reason to suggest that the charges are unreasonable.
41. Therefore the amount is payable and reasonable.

**Insurance premium £282.57 for 2019 – 2020 and estimated £300 for 2020 – 2021**

42. The applicants say that the insurance premium of 2019 – 20 totalling £282.57 each has been split three ways although the applicants appear to have been charged more than one third. However as the insurance covers four parties, the three flats and the commercial premises the charges should be split equally four ways - £178.26.
43. The applicants say that they have only recently been given sight of the insurance documents and were therefore unaware that the policy covered all four occupiers. They believe that they have been overcharged since they purchased their leaseholds but have decided not to claim reimbursement of what they consider to be previous overcharging.
44. The applicant also says that there should be a reduction in the £300 charge for insurance for the year 2020 – 2021. At the moment this is only an estimated figure and the applicants would have expected that the final charge would now be ascertained.
45. The respondent says that the share payable is clearly stated in the lease. There has been no variation in the lease as the leaseholders refused to pay for it. The full charge therefore applies.

**The tribunal's decision**

46. The tribunal determines that the amount payable in respect of insurance is £178.26 for the year 2019 – 20 and £300 for the year 2020 -2021.

**Reasons for the tribunal's decision**

47. The tribunal does not consider that it is reasonable for the applicants to bear more than one quarter of the insurance charges. The applicants were unaware of the scope of the insurance policy and in light of the clause in the lease referred to above it is unreasonable for the respondent to seek to defray the insurance costs on the property by charging them all to the applicants when he is in receipt of rent from the commercial premises and Flat C.



48. The tribunal notes that the £300 payable by each applicant in relation to insurance charges for 2020-2021 is an estimated charge. The applicants have not suggested that the estimate is unreasonable. Their suggestion is that the actual insurance costs should now be known and the tribunal agrees. The tribunal anticipates that the actual insurance charge per applicant will be lower and therefore the applicants will be credited with the difference. The applicants will be able to challenge the actual costs if and when it is appropriate.

### **Electrical testing and inspection - £37.50**

49. The applicants say that the electrical testing of the building is for the benefit of all four parties and should therefore be split four ways. It is currently only being split between Flats A and B. The charge should therefore be £18.75 for each of the applicants.
50. The respondent says that the lease does not accommodate changes to the share of costs. The full charge applies to the applicants. If flat C was charged it would also be charged at the same %. The share of the costs would not be reduced but any extra income would be used for future repairs and held on account.

### **The tribunal's decision**

51. The tribunal determines that the amount payable in respect of electrical testing and inspection is £18.75. .

### **Reasons for the tribunal's decision**

52. The tribunal repeats its reasons for reducing the costs of the fire risk assessment.

### **Application under s.20C and refund of fees**

53. The applicants made an application for a refund of the fees that they had paid in respect of the application<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, and the fact that the respondent was unwilling to make an application on his own behalf to sort out the issue of liability for service charges, the tribunal orders the respondent to refund any fees paid by the applicant within 28 days of the date of this decision.

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

54. The applicants applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it 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 any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge H Carr

**Date:** 2nd August 2021

### **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).