



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

**Case reference** : **LON/00AG/LSC/2021/0136**

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

**Property** : **103D Greencroft Gardens London NW6  
3PE**

**Applicant** : **Matthew Pitchford**

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

**Respondent** : **Hawthorne Limited**

**Representative** : **George Kyriacou**

**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  
Mr A Parkinson MRICS MIRPM**

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

**Date of decision** : **24th 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 on paper. The documents that I was referred to are in a bundle of 117 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 £473.24 is payable by the Applicant in respect of the service charges for the years 2015 – 2020 for communal electricity.
- (2) The tribunal determines that the sum of £50 is payable by the Applicant in respects of service charges for management fees demanded in 2020.
- (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") as to the amount of service charges payable by the Applicant in respect of the service charge years 2015 - 2020.

## **The background**

2. The property which is the subject of this application is a 4 bedroom flat occupying the top two floors of 103 Greencroft Gardens, an end of terrace house converted into four flats.
3. The Applicant holds a long lease of the property which requires 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**

4. In the directions the Tribunal identified the relevant issues for determination as follows:
  - (i) For the years 2015 to 2020 (the period in dispute) the applicant disputes the payability and reasonableness of electricity charges to the communal areas including
    - a. whether there has been a correct apportionment of the electricity
    - b. charges and allocation of monies paid by the leaseholders in these years.
  - (ii) The reasonableness and payability of the management charges of £250 demanded in 2020
  - (iii) whether an order under section 20C of the 1985 Act should be made
  - (iv) whether an order for reimbursement of application/ hearing fees should be made
5. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

## **Communal electricity charges for 2015 - 2020**

6. The applicant says that the communal area for electricity has only staircase lighting that is fitted mainly with energy efficient LED bulbs and operates on a timer switch. He states that energy use has remained low and consistent for years.
7. He argues that he should be paying his proportion of the actual charges for electricity for each of the years in question. He says that his proportion is 30%.
8. What the applicant has actually been charged for communal electricity is as follows:

2015 –£100

2016 - £200

2017 -19 -£250 per year

2020 - £200

9. This totals £1250.
10. The applicant has provided electricity bills for the period in dispute. He says these show costs incurred of
  - (a) 2015 - £46.07
  - (b) 2016 - £426.19
  - (c) 2017 - £122.77
  - (d) 2018 - 285.32
  - (e) 2019 - 240.71
  - (f) 2020 - 354.77
11. The applicant says that because of the managing agent's failure to pay the electricity bills in a timely fashion debt collection charge of £75.00 in 2017 and £90 in 2020 have been incurred.
12. Mr Johnston of flat C and Mr Kanagasabapathy of Flat B confirmed that they had paid the same service charges as the applicant for communal electricity.
13. The respondent says that a new electricity installation for the common parts was installed in 2015 and that about 20 lights and sockets were introduced. He says that the charges for the supply of electricity is industrial and a daily charge of 80p per day is chargeable.
14. He says that the apportionment of £200 was fair and less than the previous year.
15. The respondent says that the applicant refused to contribute to a sinking fund. He also says insurance costs have been rising.

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

16. The tribunal determines that the amount payable in respect of [service charge item] is £473.24.

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

17. The landlord's obligation to provide communal lighting is set out in paragraph (4) of the Sixth Schedule to the lease

To keep clean and reasonably lighted the Common Parts and to keep clean the windows in the Common Parts and where appropriate to furnish the Common Parts in such style and manner as the Landlord shall from time to time in his absolute discretion think fit.

18. The tenant's obligation to pay service charges is set out in Part 1 of the Fifth Schedule to the lease .... He is 'to pay the proper proportion of such rates taxes charges duties assessments impositions and outgoings attributable to the Demised Premises' ,
19. The communal electricity costs incurred are costs that the applicant is required to pay,
20. The applicant's proportion of service charges is 30% of the total expenditure. The service charge year runs from 1st January to 31st December. This does not coincide with the communal electricity bills.
21. The service charge procedures are set out in the Seventh Schedule and require that an interim charge is paid by the tenant to the landlord in advance on 24th June and 25th December in each year. If the interim charge paid by the tenant in respect of any accounting period exceeds the service charge for the period, the surplus is to be carried forward by the landlord and credited to the account of the tenant in computing the service charge in the succeeding accounting period.
22. The respondent has failed to comply with these requirements of the lease. He has also incurred charges as a result of late payment of the account.
23. Whilst the tribunal has read the response of the respondent carefully it does not address the key issues of payability under the lease and particularly the requirements of an interim charge with any surplus being credited to the tenant's account.
24. Drawing upon the bills provided the tribunal has calculated the electricity charges for the period in dispute as per the schedule below. The applicant is required to pay only those charges and is entitled to a reimbursement of any excess service charges he has paid. He is not required to pay the charges for late payment.

Year	Total billed	Tenant Contribution (30%)
2015	£46.07	£13.82
2016	£426.19	£127.86
2017	£122.77	£36.83
2018	£292.48	£87.74
2019	£332.25	£99.68
2020	£357.82	£107.35

25. The tribunal was able to match the electricity bills to the sums highlighted by the tenant for 2015, 16 and 17. However the figures that extracted for 2018, 19 and 20 varied slightly. Two of the figures in the tenant's schedule excluded VAT and one figure was not included at all.
26. The tribunal points out that the figures stated for each of the six years do not strictly relate to each service charge year. As the account seems to have been billed infrequently some of the bills cover periods within two different years. The tribunal has done its best with the billing information that it has been given. The tribunal notes this makes no difference to the total service charges which are payable.

### **Management charges of £250 for 2020**

27. The applicant says that Mr Kyriacou was directed to provide an explanation of management fees by June 18th 2021 but he has to date provided no explanation of the management charges for the year 2020.
28. The applicant says that the tasks that Mr Kyriacou had to carry out in 2020 were limited, the issuing of service charge demands, the payment of the building insurance and the payment of the communal electricity charges. No other tasks have been carried out in managing the building.
29. The applicant says that in two of the three tasks Mr Kyriacou has failed – service charges have been incorrectly calculated and he has not paid the electricity bills resulting in debt collection fees of £90.

30. The applicant therefore says that there should be no charge for management fees for the year 2020.

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

31. The tribunal determines that the amount payable in respect of management fees is £50.

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

32. The tribunal notes that the manager has been out of the country as a result of the pandemic and that his address is now a Cypriot address.
33. In these circumstances there are limited management functions that he is able to carry out.
34. The tribunal also notes that he has provided a very poor service in relation to the electricity charges and in relation to the service charge demands. The tribunal therefore considers that the management fees for 2020 should be substantially reduced.
35. The tribunal considers that as the manager has organised the insurance of the property the management fee for the year should be £50.

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

36. The Applicant made an application for a refund of the fees that he had paid in respect of the application<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
37. In the application form the Applicant 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:** 24 August 2021

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

## **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).