FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Clerkenwell & Shoreditch, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference and Court Claim Number	**:**	**LON/00AU/LSC/2020/0279 117MC577**
HMCTS Code	**:**	**P: Paperremote**
Property	**:**	**Flat c, 31 Archway Road, London N19 3TU**
Applicant/Claimant	**:**	**Bhupinder Grewal Laignel**
Representative	**:**	**In person**
Respondent/ Defendant	**:**	**Mrs Gilliam Hoggard**
Representative	**:**	**Fahri LLP**
Tribunal members	**:**	**Judge Dutton & Ms S Coughlin MCIEH**
In the county court	**:**	**Judge Dutton**
Date of decision	**:**	**17 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented 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 we were referred to are in a bundle of 149 pages, the contents of which we have noted. The order made is described at the end of these reasons.

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

1. The following sums are found to be recoverable under the terms of the Applicant's lease:
   (i) Legal costs in the sum of £250 plus VAT
   (ii) Management fees in the sum of £336
   (iii) Sinking fund of £250
2. By reason of the findings at 1 above the sums payable by the Applicant in respect of the three items is 10% of the amounts referred to above totalling £88.60. The Applicant's liability for the service charge year 2017/18 is £369.20.
3. The Applicant having paid the sum of £620.90 in respect of the service charges for the year 2017/18 is due a refund in the sum of £251.40, which we so order.

Summary of the decisions made by the Court

4. The following sums are payable by the Mrs Gillian Hoggard to Bhupinder Grewal Laignel by 14 June 2021:
   (iv) The Claim fee of £185
   (v) No order as to interest is made.

The proceedings

5. Proceedings were originally issued against the respondent on 13 January 2020 in the County Court Business Centre under claim number 117MC577. The respondent filed a Defence dated 7 February 2020. The proceedings were then transferred to the County Court at Clerkenwell & Shoreditch and then to this tribunal by the order of District Judge Swan on 3 September 2020.

6. Directions were issued and the matter eventually came for determination on 10 May 2021.

The background

7. The subject property is a flat on the top floor of a three-storey building known as 31 Archway Road London N19 3TU (the Building) containing 6 flats, on a corner plot. The flat is held under the terms of an extended lease dated 29 March 2011 for a term of 150 years from 24 December

1989 at a ground rent of £100 per annum and an obligation to pay 10% of the proportion of reasonable expenses of the landlord.

8. The new lease is subject to the terms of an original lease dated 3 April 1990 for a term of 99 years save that the ground rent was amended, and the service charge contribution reduced from 25% to 10%

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

10. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

The issues

11. This is an unusual case. In May 2019 our colleagues in claim LON/00AU/LSC/2019/0043 between Dinglis Estates Limited, the leaseholder of flat A at the Building, and the Respondent made findings recorded in a decision, issued it would seem on 9 July 2019, (the Decision) in respect of legal fees, management charges and reserve fund payments. The Decision has not been appealed.

12. The Applicant considered that the findings in the Decision should apply to her and approached the Respondent for a refund. She was rebuffed and commenced the proceedings in the County Court seeking, initially, a refund to her of £3,150 but subsequently reducing the sum claimed to £620.90, which represented the Applicant's 10% of the total service charge sought for the year 2017-18.

13. In the response the Respondent stated that she could and should have joined in the proceedings leading to the Decision and that in failing to do so the findings in the Decision were not binding on the Respondent in so far as the Applicant was concerned. An invitation to strike out was made to the Court and in the alternative a transfer to this Tribunal, which took place on 3 September 2020.

14. The sums disputed/claimed by the Applicant were as follows:

    (i) Legal fees of £1000, which the Respondent has conceded should have been £930 thus accepting a refund due to the Applicant of £9.70;

    (ii) Management fees of £900;

    (iii) A contribution to the reserve fund of £1,500

    (iv) Interest of £100.11 and court fees of £185.

County court issues

15. After the proceedings were sent to the tribunal offices, the tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.

Decisions and reasons

Legal fees in the sum of £1,000

1. These fees related to work undertaken by the Respondent's solicitors in connection with s20 notices under the Landlord and Tenant Act 1985. There are two invoices, one dated 15 May 2017, in the sum of £600 including VAT and the other dated 11 August 2017 in the sum of £303, again including VAT both being included at exhibit B to the Respondent's statement of case. There had, at the previous case, been some confusion caused by the solicitors producing the wrong invoice but that was resolved at the hearing in 2019 and is reflected in the Decision.

2. No alternative evidence was produced in this claim than that given to our colleagues, save that we do have before us a statement of case by the Respondent's solicitors, the contents of which we have noted. Our colleagues finding was that the costs were excessive and that £250 plus VAT for dealing with the two s20 notices was reasonable. We consider that an hour's work should cover these issues and concur with our colleagues on their assessment of the costs and allow the sum of £250 plus VAT.

Reserve fund

3. Our colleagues disallowed this sum of £1500 in full, through lack of evidence. In this case it would seem from the 2018/19 accounts that £1500 was used to supplement the income received. We do not understand these accounts, nor the ones for 2017/18. Neither show any income from service charge contributions. Yet we know that the Applicant paid her share for this year and presumably so did the other tenants. In any event it does not seem appropriate for the £1500 reserve fund payment to be used to meet day to day running costs of the Building. The reserve fund provision is set out at paragraph 6 of the Schedule and says as follows:

"*6. Such sums as the Lessor shall reasonably consider necessary from time to time to put to reserve to meet future liability of carrying out major repair works to the parts of the Building which the Lessor is liable hereunder to repair with the object so far as possible to ensuring that the contribution shall not fluctuate substantially in amount from time to time.*"

4. Doing the best we can, we can see that in 2018/19 there were roof repairs in the sum of £5,850, covered in part by insurance monies in the sum of £5,600. There is a shortfall of £250. We allow that sum as a sinking fund contribution from the £1500 claimed. There is still no evidence as to how the £1500 was assessed and the Respondent's explanation that it has been spent and is no longer an issue is not, in our finding the correct way of dealing with the matter. As a matter of principal, we agree that there should be reserve fund monies, but no explanation has been given as to the amount and the accounts do not record the money appropriately. This is something the Respondent can revisit but we do wonder whether she would not be well advised to seek the assistance of a Managing Agent to handle the Building and its management so that these issues can be avoided.

5. Coming onto management we find as follows.

Management

6. The term allowing the recovery of management fees is to be found at paragraph 11 of the Schedule, which says as follows:

"11. The reasonable fees of the Managing Agent for the general management of the Building PROVIDED THTAS if the said rent collection and the general management shall be carried out by the Lessor it shall be entitled to charge and be paid a reasonable management fee of the aggregate of the cost and expenses and other payments (excluding VAT) referred to in al the preceding paragraphs of this Schedule".

7. We see reference to the management fee being based on the time sent by the Respondent on management as wrong. It should be based on the expenditure incurred in the year. We conclude for the sake of this matter that reference to VAT is that to be charged by the Respondent. We do not consider it can relate to the VAT charged by a supplier as we have no indication that the Respondent is VAT rated and can recover this element. Accordingly, we calculate that the aggregated sums spent under the Schedule are as follows:

	£
Insurance	609
Repairs and maintenance	1600
Legal and professional	300
Accountancy fees	600
Sinking fund	250

Total expenditure	£3,359

8. The provisions of paragraph 11 are wanting and vague. We find that the management fee should be by reference to the sum of £3,359. What should be a reasonable fee? We have to make an assessment, as the paragraph gives no hint, other than 'reasonable'. From our knowledge and experience we would expect the management fee to be based on a unit cost, as appears to be the case in the two estimates the Respondent exhibits to her statement of case. However, that would not be our interpretation of the wording in the lease. Again, doing the best we can on the evidence before us and using our own knowledge and experience we consider a management charge of 10% would be reasonable. This gives a management charge for this year of £336, rounded up, which we would allow as being reasonable.

Summary

9. We find that the Applicant's liability for service charges for the year 2017/18 is 10% of the total of £3,695, being £369.50. We understand that she has paid the sum of £620.90 and is therefore due a credit for this year of £251.40. We order repayment of that amount.

10. However, we are told that the Applicant has not paid the service charge for 2018/19 pending the outcome of this case. It seems to us that a possible way of dealing with this refund is that it is allowed against the liability the Applicant has for service charges for the years going forward. We do not order that to be the case, just suggest. We would hope that the accounts are prepared in a more open basis showing a balance sheet with income properly recorded and balances shown. Reserve fund monies should be clearly shown, and the leaseholders should be supplied with accounts setting out their financial position.

County Court Issues

11. The Applicant sought interest. She asks for same from 21 August 2019 to the date of this decision. I do not consider it appropriate. First because the claim is in essence a small claim case and secondly the sums involved would be so small, around 5p per day if I applied a rate of 8%, which appears inappropriate in the present economic climate with very low base rates. If an allowance linked to the loss the Applicant may have suffered, bearing in mind that interest is not a penalty, the amount involved would be negligible.

12. I do award the Applicant the court fee of £185 which should be paid within 28 days of the final judgment in the County Court. No other submissions are made on costs.

13. We are, as a Tribunal, minded to and do make an order under s20 of the Act prohibiting the Respondent from recovering the costs of these proceedings as a service charge, considering it just and equitable so to do, given our findings.

14. For the avoidance of doubt, we should make it clear that our decision relates to the Applicant only.

Name: Judge Dutton **Date:** 17 May 2021

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.