



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

Case reference : **LON/00AB/LAC/2021/0004**

HMCTS code : **P: PAPERREMOTE**

Property : **34A Highland Avenue, Dagenham,
RM10 7AS**

Applicant : **Thomas Daniel Bell-Filochowski**

Respondent : **Mikael Haile Kassa Belay**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Tribunal Judge Brandler**

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

Date of decision : **22nd June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote paper hearing 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 the papers. The documents that I was referred to are in two bundles. One bundle was produced by the Applicant containing 34 pages. One bundle was produced by the Respondent containing 57 pages. The contents of all of the documents have been noted. The order made is described below.

Decisions of the tribunal

- (1) None of the disputed service charges demanded for the service charge periods 2014-2019 are payable. The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) No determination is made in relation to disputed service charge periods 2020-2022.
- (3) 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 lessee through any service charge.
- (4) The Tribunal orders that the Respondent pay the Applicant £300 in respect of a refund of the fees paid to the tribunal, to be paid within 28 days of this decision.

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 administration charges payable by the Applicant in respect of the service charge years 2014-2022.
2. The Applicant in his application sought a determination under paragraph 5A of Schedule 1 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable. However, at Directions stage the Tribunal noted that the details on the application form appeared to relate to service charges. The Directions were prepared on the basis that what is required is a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 whether administration charges are payable. The Directions Order is dated 17th February 2021 and by paragraph (3) of that order provides that "*These directions have been drafted on the papers, without an oral hearing. Either party may*

therefore apply to the tribunal for a variation of these directions within seven days of today". No application has been received from either party in that regard.

3. The Tribunal identified in the Directions Order that the issues to be determined included:
 - Shortfalls in payments made in respect of 2014-2105 and 2015-2016
 - Service charges demanded on 7 December 2020 in the sum of £2610
 - Whether the costs are reasonable
 - Details of the insurance policy and the reasonableness of the premium
 - Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made
 - Whether an order for reimbursement of fees paid for this application should be made.
4. By the time the applicant had finally submitted his schedule of disputed service charges, the issues had increased to include service charges 2014-2022 as well as an issue in relation to shortfall charges of £660.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The property which is the subject of this application is a ground floor flat with the benefit of a rear garden.
7. 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.
8. 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.

9. The lease is dated 21st May 2014 between Michael Haile Kassa Belay (“The Respondent”) and Tom Filochowski (“The Applicant”) for a term of 125 years.

Paper determination

10. The Tribunal is satisfied that this case is suitable to be dealt with on the papers alone, without a hearing. No request for a hearing has been received and therefore the case is being dealt with on the papers alone.

Service charge demands for an annual payment of £1020 for service charge periods 2015-2022

11. The Applicant asserts that he had paid various amounts for service charges over the years. Evidence produced are photocopies of cheque stubs and one bank statement.
12. The Respondent asserts that limited payments have been made by the Applicant. As evidence for this assertion the Respondent has produced a schedule in his bundle [57] in response to the Applicant’s schedule of disputed service charges which is annotated by him and appears in his bundle [56]. The Respondent asserts in his schedule that service charges are owed by the Applicant for the period 2014-2022 in the sum of £4422.93. However, the Respondent has provided no evidence of correctly demanded service charges in his bundle of documents for the Tribunal’s consideration.
13. The directions clearly provide for the disclosure of demands and invoices to be provided to the Applicant in the Directions order dated 17th February 2021. That order clearly states under the heading for Disclosure, “3. *By 15 March 2021 the landlord shall send to the tenant by post and email copies of all relevant service charge accounts and estimates for the years in dispute, together with all demands for payment and details of any payments made*”.
14. The terms of the lease provide for service charges to be paid by the applicant. By paragraph 4.2 of Schedule 6, the landlord is obliged “*To serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical and after incurring, making a decision to incur, or accepting an estimate relating to any of the Service Costs*”.
15. By paragraph 4.3 of Schedule 6, the landlord is obliged “*To keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant, on Giving reasonable notice, to inspect the accounts, records and receipts*”.

16. No service charge demands or accounts have been provided to the Tribunal by either the Applicant or the Respondent, although they have both provided detailed correspondence and reminder letters in relation to outstanding service charges. The only invoice produced by the Respondent in his bundle is addressed to the Applicant from “Lee Barrs Exterior Cleaning and Property Maint” dated 2/09/2014 in the sum of £650. No VAT is charged. [37]
17. The correspondence from the Applicant suggests that he has attempted to reduce service charges by carrying out work himself, without authority, has delayed for considerable periods in paying ground rent, and suggests in one email that he just pay ground rent instead of service charges [43]. None of this complies with the Applicant’s responsibilities under the terms of the lease.
18. The Respondent as the Landlord is bound to comply not only with the terms of the lease but also with the statutory requirements in relation to demands. For example, the demand must be in writing, must provide the Landlord’s name and address, must provide a summary of rights and obligations, and must have been demanded within 18 months of becoming liable to pay for works undertaken, or services are provided.
19. The complete absence of any such properly demanded service charges, administration charges or accounts for the period from 2014 to date suggests, on balance, that there are none.

The tribunal’s decision

20. The tribunal determines that none of the disputed service charges or administration charges for the service charge periods 2014 to 2019 have been validly demanded and therefore are not payable.
21. The tribunal makes no finding in relation to service charge years 2020/2021 and 2021/2022.

Reasons for the tribunal’s decision

22. Whilst the Applicant’s case was at times muddled, and lacks evidence about the sums that he claims he has paid, there is no evidence of correctly demanded service or administration charges before the Tribunal.
23. It is not sufficient for a Landlord to demand service charges without complying with the statutory requirements. Discussion between the parties by email and letters, as has been provided to the Tribunal, are not evidence of a valid demand.

24. As no service charge demands have been validly made, none of the service charges or administration charges disputed for the period 2014-2019 are payable.
25. In relation to disputed service charge demands for the period from 2020-2022 no determination has been made. The Landlord may not be statute barred in relation to these amounts at this stage. In any event, there is insufficient evidence before the Tribunal to assess the application for those periods.

Application under s.20C and refund of fees

26. The Applicant includes an application for a refund of the fees that he had paid in respect of this application. Having taken 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.
27. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having taken 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: Tribunal Judge Brandler **Date:** 22nd June 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).