



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

Case Reference : **LON/00AM/LSC/2020/0390 and
LON/00AM/LSC/2021/0047
V:CVPREMOTE**

Property : **Flat 12, Somerford Road, London
N16 7TT**

Applicant : **Newlon Housing Trust**

Representative : **Mr J William**

Respondent : **Haziz Ismali and Mrs Vojsava Kurti**

Representative : **Did not appear and were not
represented**

**Type of
Application** : **s27A and s20C Landlord and
Tenant Act 1985, Sched 11 para 5
Commonhold and Leasehold
Reform Act 2002.**

**Tribunal
Members** : **Judge F J Silverman MA LLM
Ms S Phillips MRICS
Mr C Piarroux JP**

Date of Hearing : **15 October 2021**

**Date of
Decision** : **16 October 2021**

DECISION AND ORDER

- 1 The two applications whose case number appears on this decision are treated as having been conjoined and this decision applies to them both equally.**
- 2 The Tribunal determines that the service charges demanded by the Applicant for the years 2018/9, 2019/20, 2020/21 are disallowed and not payable by the Respondents for the reasons set out below.**
- 3 The Tribunal makes no orders under s20C Landlord and Tenant Act 1985 and Sched 11 para 5 Commonhold and Leasehold Reform Act 2002.**
- 4 The case is re-transferred to Clerkenwell and Shoreditch County Court.**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE. 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 to which the Tribunal was referred to are contained in an electronic bundle the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

- 1 The Respondents are the tenants of Flat 12 26 Somerford Grove London N16 7TT (the property) of which the Applicant is the landlord and immediate reversioner.
- 2 The Applicant holds this property together with a number of other flats in the building which is commonly known as Olympic House on a long lease and lets the individual flats to tenants. The subject property is let to the Respondents on an assured shorthold tenancy created on 20 June 2016.
- 3 The Applicant issued proceedings in the Clerkenwell and Shoreditch County Court seeking payment of arrears of both rent and service charge and an order for possession.
- 4 The matter was transferred to the Tribunal on 31 January 2020 and the Tribunal issued Directions on 10 February 2021, 16 June 2021 and 15 and 18 October 2021. The Tribunal is dealing only with the service charges issues of the claim.

5 The Respondents also filed an application with the Tribunal on 12
February 2021 in which they asked the Tribunal to make a
determination of the liability to pay and reasonableness of the service
charges for the same years as above. The two cases are treated as
having been conjoined and this decision applies to both of them.

6 In their application the Respondents said that they had complained to
the Applicant that the charges levied were too high but they provided
no evidence to support their contentions. No statement of case was
filed on their behalf and no witness statements were filed. They did not
appear and were not represented at the hearing. On the morning of the
hearing the Tribunal received a copy of a petition allegedly signed by a
number of tenants protesting against the cost of the service charges and
a series of photographs and a video clip apparently showing the poor
state of the upkeep of the interior of the property. The Tribunal did not
take these documents into account in making their decision because
they were received too late.

7 The Tribunal received and read over 200 pages of electronic
documentation from the Applicant which is referred to below.
Additional documentation sent to the Tribunal on the working day
preceding the hearing which had not been received by the Tribunal
prior to the commencement of the hearing was not considered by the
Tribunal. No witness statements were filed on behalf of the Applicant.

8 The hearing took place by way of a remote video (CVP) link to which
the parties had previously consented.

9 In accordance with current Practice Directions relating to Covid 19 the
proceedings were recorded and the Tribunal did not make a physical
inspection of the property but were able to obtain an overview of its
exterior and location via GPS software.

10 Mr J William spoke for the Applicant. The Respondents did not appear
and were not represented.

11 The Tribunal told the Applicant that despite the non-response by the
Respondents it expected the Applicant to demonstrate to the Tribunal
that the service charges payments which it was claiming from the
Respondents fell properly within the scope of the terms of the
Respondents' lease and that demands for these sums had been
correctly served.

12 The incomplete copy of the Respondents' tenancy agreement contained
in the bundle (p32) said that the Respondents would pay a service
charge in addition to rent but gave no details of the items which were
to be included in the charge nor of the percentage of the cost which was
to be attributed to this property.

13 In the absence of the above information statements of account
contained in the bundle of documents (eg p63 bundle 2) were
impossible to reconcile or determine whether they are either correct or
reasonable. One item did however attract the Tribunal's attention and
was discussed with the Applicant.

14 The Tribunal queried the managing agent charges which appeared to be
excessive (annual charge of £38,464.96 of which £2,404.06 allocated to
the subject property year ending March 2020). The Applicant
explained that this was the charge which they had to pay to the superior
lessee's managing agent and which they then apportioned to the

- tenants. The Tribunal accepts that that this building is both large and complex but the fee is on the face of it enormously high and was curious as to why the Respondents were being asked to pay a separate service charge item for e.g. lift maintenance when such repairs would normally be expected to be covered by the superior landlord's obligations and thus included in the managing agent's charges. The Applicant said that some repairs were carried out directly by them and would not therefore have been included in the managing agents' charges. Both this item and the accompanying administration fee would only be chargeable to the Respondents if included in the tenants' obligation to pay under the terms of their tenancy agreement.
- 15 In the absence of any evidence produced by the Applicant to show which items of expenditure and in what amounts are included in the tenants' obligations to pay service charge under the terms of their tenancy agreement, and in the absence of any evidence produced by the Applicant that the requisite demands and accompanying notices of tenants' rights had been served on the Respondents the Tribunal has little option but to declare that no sums are payable by the Respondents for the service charge years 2018/19, 2019/20 and 2020/21. Non-compliance with s20B may now render some of the earlier charges irrecoverable.
- 16 The Respondents made no representations in support of their application under s20C and the Tribunal accordingly declines to make an order under this section.
- 17 The Tribunal recommends that both parties seek legal advice to clarify their rights and obligations under the tenancy agreement.
- 18 This matter is now re-transferred to the Clerkenwell and Shoreditch County Court.

19 **The Law**

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).

Section 47 Landlord and Tenant Act 1987

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed

by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a) for inspecting the accounts, receipts and other documents supporting the summary, and

(b) for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 16 November 2021

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.