



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

**Case reference** : **LON/OOAG/LSC/20210294**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **8 Eton Hall, Eton College Road,  
NW32DW**

**Applicant** : **Leila Mohammadi**

**Representative** : **Mr Ough**

**Respondent** : **Shellpoint Trustees Ltd**

**Representative** : **Mr Comport, Dale & Dale Solicitors**

**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 S. Mason FRICS**

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

**Date of decision** : **15<sup>th</sup> September 2022**

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**DECISION**

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

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOT. 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 212 pages, supplemented by a further 51 pages, the contents of which I have noted. The Applicant also sent the tribunal a further five pdf documents and the Respondent provided submissions on these. The contents of these have also been noted. The order made is described at the end of these reasons.

## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £27,473.01 is payable by the Applicant in respect of the service charges for the years 2020– 2021 and accumulated arrears of service charges.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) payable by the Applicant in respect of the service charge years 2020- 2021 and previous arrears totalling £27,299.41 arrears and £412.13 planned maintenance per quarter.
2. The tribunal notes that the Applicant provides no explanation of her figures and how they can be reconciled with other elements of her application.

## **The hearing**

3. The Applicant was represented by Mr Ough, a McKensie friend, at the hearing and the Respondent was represented by Mr Lederman of Counsel instructed by Dale & Dale Solicitors. Mr Daniel Weil from the Respondent’s managing agents Parkgate Aspen also attended and gave evidence for the Respondent. There were also two observers present, Dr Oraki, a friend of the Applicant and Ms Hall, a member of the public.
4. The tribunal gave a brief adjournment at one stage of the hearing for Dr Oraki to speak to Mr Ough about the case. It did not however allow her to make additional submissions following Mr Ough’s submissions.

## **The background**

5. The property which is the subject of this application is a 2 bedroom flat in a block of 120 flats. Eton Hall is one of three blocks collectively known as the Etons and managed together by Parkgate Aspen for the Respondent.
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 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 will be referred to below, where appropriate.
8. There has been a long history of proceedings between the parties. Counsel for the Respondent provided a useful summary at page 73 of the hearing bundle. The Respondent says that the Applicant has not paid service charges voluntarily since the 1980s.
9. There are allegations by the Applicant that the Respondent has been harassing her for thirty years. These allegations were not developed or substantiated during the hearing.

## **The issues**

10. 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 planned maintenance costs of £412.13 charged per quarter in service charge year 2020- 2021
  - (ii) Whether the landlord has refused to accept service charge payments and failed to serve notices and demands as required by statute and whether that refusal and failure is to be considered in calculating arrears
  - (iii) Whether the Applicant owes the sum of £27,299,41 because she has paid £26,181.92 in respect of service charge arrears
11. 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.

**The payability and reasonableness of the sum of £412.13 per quarter in planned maintenance charges in 2020 - 21**

12. The Applicant says that the planned maintenance charges are not payable under the lease and that no breakdown of the charges has been provided by the Respondent.
13. The Applicant's representative suggested that as there had been some disrepair in the property which had not been addressed that the payability of planned maintenance charges was thrown in doubt.
14. The Respondent says that the lease does allow planned maintenance service charges. Counsel refers the tribunal to clause 2(2) (f) of the lease and its elaboration in the Fourth Schedule of the lease. The Respondent says that other names could be applied to the charge covered by the clause such as reserve fund or sinking fund.
15. Mr Weil gave evidence which demonstrated how monies collected under the heading planned maintenance was spent. He also gave evidence that there is a Planned Maintenance Programme which demonstrates that many major works have taken place recently. He explained that the budget was a working document that would be changed to reflect inflation, changing priorities etc. He also said that the managing agents made great efforts to make planned maintenance affordable and proportionate.
16. The Respondent also says that the planned maintenance charge does not have any relationship with any issues of disrepair. Mr Weil showed the Applicant's representative and the tribunal the composition of the service charge demands and what was covered by planned maintenance. He also indicated how repairs to individual flats were covered by service charges and that any charges relating to any such repairs were not dealt with under planned maintenance costs.
17. The Respondent points out that the Applicant's complaints of disrepair were the subject of a County Court judgment against the Applicant on 13<sup>th</sup> February 2020. The Respondent argues that it is an abuse of process to raise those issues now.
18. The Respondent points to the 'unless' order made by the tribunal against the Applicant dated 22<sup>nd</sup> February 2022 and varied on 30<sup>th</sup> March 2022. This order required the Applicant to give full reasons why an amount was disputed. No issue of disrepair was raised in those reasons.

**The tribunal's decision**

19. The tribunal determined that the amount payable in respect of planned maintenance for the year 2020- 2021 is £412.13 per quarter.

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

20. The tribunal considered the relevant provisions of the lease.
21. It was satisfied that the lease enables the Respondent to make demands for planned maintenance.
22. In connection with the allegations of disrepair, the tribunal noted that not only would such work fall under a separate budget heading, but that the Applicant was raising new issues at a very late stage in the proceedings, issues that it appeared had been previously the subject of court proceedings and therefore not relevant to the matter in hand. The Applicant was also in breach of the tribunal's 'unless' order.
23. The tribunal is satisfied that the Applicant has made no argument which prevents the planned maintenance service charge being payable and reasonable.

### **The refusal of service charge payments and non service of demands and other notices from 21<sup>st</sup> July 2021 and whether this refusal should be taken into account in the calculation of arrears**

24. The Applicant says that she has made a number of payments since 21<sup>st</sup> July 2021 and these have been returned by the Respondent.
25. The Respondent says that it has returned the payments made as the Respondent does not want to waive its right to forfeit. The Respondent explains that it was intending to make its own application for a determination of the service charges but that the Applicant made her application first.
26. The Respondent says that it is still intending to forfeit the Lease and does not want to waive or have it suggested that it has waived its right to forfeit.
27. The Respondent provided a spreadsheet showing the monies received and returned from 25<sup>th</sup> June 2021.
28. The Respondent agrees that it has also not served the required notices of service charge demands and breakdowns since on or about 21<sup>st</sup> July 2021. This is again to avoid any issues of waiver in connection with possible forfeiture proceedings.

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

29. The tribunal determines that the return of monies and the non-service of demands and notices are not relevant to its determination.

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

30. The tribunal is concerned with the reasonableness and payability of service charges up to July 2021.
31. The return of monies and the non-service of notices and demands subsequent to July 2021 is not relevant to the calculation of arrears prior to that date.
32. The Respondent will have to decide what, if any, action to take in relation to non-payment of service charges from July 2021.

### **Whether the Applicant has paid the sum of £26,181.92 which the Respondent says is outstanding**

33. The Applicant says that she paid this money. She says it was paid by her Solicitors in 2018. The Applicant's case is that this sum should be set against the alleged arrears.
34. She refers to a letter from her solicitors, Hodge Jones and Alan dated 4<sup>th</sup> December 2018 which refers to a previous letter dated 10<sup>th</sup> October 2018 from Hodge Jones and Alan to substantiate her case.
35. The Respondent says that the Applicant has made no such payment and has only been making monthly payments latterly of £360 as shown on the running balance statement sent to the Applicant by Dale and Dale, the Respondent's solicitors.
36. The Respondent has made efforts to find out from the Respondent's previous solicitors whether it has other documentation in relation to these monies. None has been traceable.
37. The Respondent says however it is for the Applicant to prove that she has made the payment that she claims.
38. Mr Weil points out that the letter from the Applicant's solicitors dated 4<sup>th</sup> December 2018 does not confirm payment. What it does is to refer to a previous letter and states that the arrears figure was without foundation. Specifically, it states 'In addition the sum of £26, 181.92 for previous arrears is wrong for all the reasons we have set out in our letter of 10<sup>th</sup> October 2018 to which we have to date not had a substantive reply'.
39. The Respondent was concerned about the credibility of the letter and applied to the tribunal for directions about this letter and the previous letter.

40. Following its application Judge Abbey made an order requiring the Applicant to produce within 28 days of 26th July 2022 (the date of the order) the original or a complete certified photocopy of the letter dated 4<sup>th</sup> December 2018 from Hodge Jones and Allen together with the original or a complete certified photocopy of the letter dated 10<sup>th</sup> October 2018 from Hodge Jones and Allen mentioned in the final paragraph of the previous letter.
41. The Respondent points out that this order has not been complied with and submitted that this was a serious flaw in the Applicant's case.

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

42. The tribunal determines that the amount payable in respect of service charge arrears is not reduced by a sum of £26,181.92.

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

43. The tribunal does not accept that the letter from Hodge Jones & Allen provides evidence that money has been paid and is very concerned that the Applicant failed to comply with the tribunal order.
44. The Applicant has not produced any evidence that this substantial amount of money has been paid. The tribunal accepts the Respondent's submission that the Applicant has had every opportunity to demonstrate, through witness statements, bank accounts etc that this money has been paid and has failed to do so. The Applicant's representative agreed that he was unable to substantiate that the sum had been paid.
45. It is not for the Respondent to prove that the money has not been paid. It is the Applicant's application, and she has failed to provide any evidence. Nonetheless the tribunal is impressed by the efforts that the Respondent has made to check if there is any veracity to the Applicant's contention.

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

46. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions and taking into account the determinations above, the tribunal determines not to make such an order.

**Name:** Judge Helen Carr

**Date:** 15<sup>th</sup> September 2022.

## **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).