



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

Case reference : **CAM/00KF/LSC/2022/0024**

**HMCTS code
(audio, video,
paper)** : **A: BTMMREMOTE**

Property : **Flat 26, Lime Court, Greensward Lane,
Hockley, Essex SS5 5HB**

Applicants : **Terance Phillip Milner**

Respondent : **Notting Hill Genesis**

Representative : **Christopher Milson (Rents and Service
Charges)**

Type of application : **Liability to pay service charges**

Tribunal members : **Judge David Wyatt**

Date of decision : **18 October 2022**

DECISION

Covid-19 pandemic: description of determination

This has been a remote audio hearing. 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 I was referred to are those described in paragraphs 3 to 5 below.

Decisions of the tribunal

- (1) The tribunal determines that the following service charges are or would be payable by the Applicant for estimated gas supply costs for 2022/23:
 - a. for personal gas, £254.33 (£4.89 per week); and
 - b. for communal gas, £78.08 (£1.50 per week, as demanded) or, if the balance can be and is duly demanded, £169.55 (£3.26 per week).
- (2) The tribunal orders under section 20C of the Landlord and Tenant Act 1985 (the “**1985 Act**”) that any costs incurred by the Respondent in connection with these 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 Applicant.
- (3) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”).

Reasons

Applications

1. The Applicant tenant sought determinations under section 27A of the Landlord and Tenant Act 1985 of payability of service charges for estimated costs of the gas supply to his flat, and the gas supply for the communal areas of the building, for 2022/23.
2. The Applicant also sought: (a) an order for the limitation of the Respondent landlord’s costs in the proceedings, under section 20C of the 1985 Act; and (b) an order to reduce or extinguish liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.

Procedural history

3. On 16 June 2022, the tribunal gave case management directions providing for the Applicant to produce his bundle of case documents and the Respondent to produce their documents in response. With extensions of time, both parties did so. The extended directions expected that the tribunal would determine this matter on or after 19 August 2022 based on the documents provided unless the tribunal considered a hearing was necessary or either party requested a hearing. Neither party did so, but on review of the documents it became apparent that the parties had not provided an adequate explanation of their cases or the underlying documents and a hearing would be necessary.

4. Accordingly, on 26 August 2022, the tribunal gave further directions requiring the parties to answer simple questions and provide missing documents and information in advance of a telephone hearing. On 12 September 2022, the Applicant produced a letter with further enclosures and on 25 September 2022 the Respondent produced a short second witness statement from Christopher Milson (two substantive pages and a signature page).
5. The hearing by telephone on 6 October 2022 was attended by the Applicant (Mr Milner) in person. The Respondent failed to attend the hearing. I was satisfied that the Respondent had been notified of the hearing and that it was in the interests of justice to proceed. However, the Applicant had not received a copy of Mr Milson's second witness statement. The contents were discussed during the hearing and as arranged with the Applicant this decision was on 7 October 2022 sent to the parties in draft with a copy of the statement, allowing until 14 October 2022 for any further comments. The Applicant sent a letter dated 11 October 2022 which was copied to the Respondent and gave helpful further information but does not ask or cause me to change my decision. The Respondent did not comment on the draft decision.

Building and tenancy agreement

6. Lime Court accommodates 31 flats, each let at social rents with variable service charges payable in addition to the rent. The Applicant accepted that the building only had a small communal area. However, he said it had long corridor and stairway areas with radiators and windows. He said it also had a visitor room which people could hire, and a further bathroom, but the tribunal has no information about how costs relating to those facilities are allocated.
7. The Applicant agreed that the hot water was heated by electricity (charged separately), so the gas charges we are concerned with relate only to heating the building (space heating). He said there were several gas boilers which all served the same pipework, supplying the radiators throughout the building. There is only one gas meter for the building.
8. The Applicant's tenancy of Flat 26 began on 25 August 2014 as a weekly starter tenancy, which appears to have converted automatically to an assured tenancy after 12 months. It provided for payment of service charges (initially £35.20 per week). The annexed list of relevant services includes communal heating and "*Personal consumption – gas*" in addition to the rent.
9. In the general explanation given in the first witness statement from Mr Milson, the Respondent said that it sets budgets each year based on estimated costs, informed by expenditure the previous year, using these to calculate the service charges sought for estimated costs. The actual

costs are then calculated, with a final statement delivered to residents setting out any surplus owed to them or any shortfall sought from them.

Previous decision – 2021/22

10. The Applicant referred to the decision made by a different tribunal on paper in respect of his previous application (case number CAM/22UL/LSC/2021/0031) to determine the service charges payable for the estimated personal and communal gas costs for 2021/22. In those proceedings, the Applicant had said: (a) the actual costs for 2019/20 had been £173.72 for personal gas and £61.36 for communal gas (these charges were not disputed); and (b) the charges for estimated costs for 2020/21 had been £222.04 for personal gas and £95.16 for communal gas.
11. It appears from the decision that the Applicant's concern had not been about the total estimated cost but about the apportionment of that cost, contending that the then increase of 35p per week for the estimated personal gas charge should have been added to the increase of 3p per week for the estimated communal gas charge. The Respondent had not disputed the allegation that there was only one gas meter, but agreed to discuss apportionment with the Applicant once the final accounts for 2021/22 had been prepared.
12. The relevant tribunal determined that the service charges sought by the Respondent for estimated costs of £4.62 per week (£240.24) for personal gas and £1.86 per week (£96.72) were reasonable and payable for 2021/22. They made it clear that the final charges for 2021/22, including the question of apportionment of those charges, could be the subject of a new application when the actual costs were confirmed.

Estimated charges for 2022/23

13. The Respondent's notice of the charges sought for the year from 4 April 2022 included weekly charges of £6.65 for gas and £20.49 "*service charge*". The accompanying service charge budget included £78.08 for the year for the communal gas supply. The Applicant disputes these service charges sought by the Respondent for the estimated costs for 2022/23 of: (a) £6.65 per week (£345.80 pa) for the gas supply to his flat; and (b) £78.08 pa (£1.50 per week) for the communal gas supply.
14. The Applicant contends that the former should not have been increased from the previous year's charge of £4.62 per week and the latter should not have been decreased from the previous year's charge of £1.86 per week. That charge should, he argued, be increased to £7.82 per week, based on the actual cost of £648.80 which appeared to have been incurred for communal gas in 2020/21, although he argued in a different letter that only £1.86 of this would be reasonable because four residents

had been wasting a lot of heat. The apportionment of the estimated gas cost is particularly important to the Applicant because he depends on support payments which will not cover certain costs. He said that, ever since 2014, he had turned the thermostats off in his flat. The Respondent had written to the Applicant on 13 May 2016 to explain that they would not remove the charge for personal gas because the Property had the benefit of the arrangements to provide the heating service, irrespective of whether or how he chose to make use of it.

15. In the documents for these proceedings, the Applicant described concerns and complaints about, in effect, heat in the communal areas being wasted by the building and some tenants of other flats (producing a number of complaint letters to the Respondent about individual tenants leaving windows in corridors open in winter and turning thermostats up to maximum in communal areas), the single gas meter and confusing figures shown in the documents produced by the Respondent.

Estimated cost

16. Mr Milson said in his witness statement that the statement of actual costs for the year to 3 April 2022 was not yet ready. He said tenants had been notified that there would be an “*overall*” surplus for 2021/22. That gives no indication as to whether the gas supply costs were more or less than the total estimate (£336.96) for 2021/22.
17. The Respondent had been directed to explain precisely how the estimated charges for 2022/23 had been calculated, but failed to do so. Mr Milson said in his statement only that charges had been based on the actual spend for 2020/21 (but he could not say what that was) and: “*The utilities would have had an uplift of 50% in line with the predicted estimates provided by our energy supplier*”.
18. At the hearing, the Applicant helpfully accepted that the total estimated cost of £423.88 for 2022/23 was reasonable. It represents a little over £35 per month and the estimate of £336.96 for 2021/22 was reasonable. Since then, it is well-known that energy costs have risen substantially and may well remain high over the coming winter. I agree that the total estimated cost is reasonable in the circumstances; £423.88 represents an increase of a little over 25% from last year’s estimate.

Apportionment

19. The Respondent had also been directed to explain how, if there was only one gas meter, personal and communal gas use was apportioned. Mr Milson said in his second witness statement that meter readings were taken and sent to the energy supplier. He said that, currently, 60% was

apportioned to residents and the remaining 40% was apportioned to the communal service charge.

20. The Respondent’s statement of actual costs for 2020/21 had caused confusion because it mistakenly showed the total gas costs of £648.80 as if they related only to communal gas, with no charge for personal gas. In his second witness statement, Mr Milson explained this mistake (which had been part of the cause of the Applicant’s concern that the communal gas charge should be much higher). Mr Milson indicated that the correct figures were those set out in bold in the following table, which the Respondent had been directed to complete so far as possible:

Service charge year	Estimated personal gas (£)	Actual personal gas (£)	Estimated communal gas (£)	Actual communal gas (£)
2022/23 [E 423.88]	345.80 [81.58%]	NA	78.08 [18.42%]	NA
2021/22 [E 336.96]	240.24 [71.3%]	NA	96.72 [28.7%]	NA
2020/21 [E 317.41] [A 648.80]	222.19 [70%]	389.28 [60%]	95.22 [30%]	259.52 [40%]
2019/20 [E £317.40] [A 235.08]	222.18 [70%]	173.72 [73.9%]	95.22 [30%]	61.36 [26.1%]

21. The calculations in the table above in square brackets are mine, to show the total estimated (“E”) and actual (“A”) costs and the proportions in which the Respondent appears to have apportioned those costs. However, the Applicant produced a copy letter from the Respondent which said (in effect) that in view of the delays in producing the actual accounts for 2020/21 no balancing charge would be sought from tenants in respect of the costs which exceeded the estimates for that year. It appears Mr Milson gave the actual cost figures for that year only to indicate how the total costs would have been apportioned.
22. The Applicant accepted that a 60/40 apportionment would be “fairer”, but contended that the apportionment should be nearer 50/50. He emphasised the long communal areas in which he said heat was being wasted by some tenants (adding at the hearing and in his letter of 11 October 2022 that if the actual gas cost was higher than the estimated £423.88 for 2022/23 he would contend that a 60/40 apportionment

would be unreasonable). I give some weight to the complaints made by the Applicant and his own circumstances, but reasonable allowance also needs to be made for appropriate ventilation, protection of the building and the needs of tenants in sheltered housing accommodation. As discussed at the hearing, the method of apportionment of these estimated gas charges needs to be capable of simple operation so that it is reasonable overall, without creating additional administration costs which are disproportionate to the costs being apportioned.

23. However, the Respondent gave no justification for the different apportionments of the estimated charges for 2022/23 of more than 80% to personal gas (as set out in the table above) and did not attend the hearing. The previous tribunal decision at just over 70% to personal gas was made for the estimated charges for 2021/22 and, in the absence of any explanation about apportionment, expressly anticipated that the parties would discuss apportionment when they had the actual costs for that year (which they are still waiting for). I consider that based on the further information given by the parties in these proceedings the 60/40 apportionment now explained (or proposed) by the Respondent is reasonable for the estimated charges for 2022/23.
24. Accordingly, the amount which would be payable by the Applicant as a reasonable charge for the estimated costs of personal gas for 2022/23 is £254.33 (60% of £423.88). This is payable weekly, at £4.89 per week.
25. The amount payable by the Applicant as a reasonable charge for the estimated costs of communal gas for 2022/23 is currently £78.08 (payable weekly, at £1.50 per week), because that is all that has been demanded (as discussed at the hearing). If the balance can be and is duly demanded, the total amount which would be payable for communal gas would be £169.55 (40% of £423.88), payable weekly at £3.26 per week.
26. As discussed at the hearing, this decision can only determine the amounts payable for estimated costs for 2022/23. Any issue in respect of the actual costs and their apportionment, when those are known, might be the subject of a new application if the parties are unable to agree. The parties are encouraged to discuss matters directly in future, to seek to avoid the need for further proceedings. This decision is rather long, but I hope it will avoid the need for further proceedings or at least help to avoid confusion and enable them to be dealt with efficiently.

Section 20C and paragraph 5A (cost protection applications)

27. In future, it would be better if the Applicant could focus on preparing clear and concise communications which enable the recipient to deal with them efficiently, without referring back to historic correspondence, endeavouring where possible to discuss matters with the Respondent by telephone. However, the substance of his concern has been clear through two sets of tribunal proceedings. Despite this, the Respondent failed to

give any actual explanation of the basic questions of how their charges are apportioned or the mistake in the 2020/21 statement until shortly before the hearing, following the specific direction from the tribunal requiring them to do so, and did not attend the hearing. I doubt they would seek to recover any costs of these proceedings through the service charge, but in any event I am satisfied that it is just and equitable to make an order under Section 20C of the 1985 Act to ensure they cannot.

28. As discussed at the hearing, I do not make an order under paragraph 5A of Schedule 11 to the 2002 Act because no administration charge in relation to the costs of these proceedings has been suggested, let alone identified. If the Respondent does seek to make any such administration charge, this decision will not preclude the Applicant from making a new application under paragraph 5A in respect of it.

Name: Judge David Wyatt

Date: 18 October 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (extracts)

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.