



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

Case reference : **LON/00BG/LSC/2022/0069**

Property : **54 Burr Close, London E1W 1ND**

Applicant : **South Quay Plaza Estates (Freehold) Limited**

Representative : **Mr Conor Kennedy (Counsel) instructed by Bretherton, Solicitors**

Respondent : **Ms Marian Denise Lewinski**

Representative : **Mr Palfrey (Counsel)**

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

Tribunal members : **Mr Ian Holdsworth FRICS MCI Arb
Stephen Wheeler MCIEH**

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

Date of decision : **18 November 2022**

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that the sum of £9,581.50 was not properly demanded by the Applicant in respect of the service charges for the period **1 April 2015 to 31 March 2019**. These monies are not recoverable from the Respondent.
- (2) No decision is made by the Tribunal in respect of the counter claim in accordance with the Directions dated 2 March 2022.
- (3) Since the Tribunal has no jurisdiction over County Court costs and fees this matter should now be referred back to the County Court at Clerkenwell and Shoreditch under Claim Number FooYM388 for determination of these matters.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the Act”) as to the amount of service charges payable by the Respondent in respect of the service charge years 1 April 2015 to 31 March 2019 in respect of 54 Burr Close, London E1W 1ND (“**the flat**”) situated at South Quay Plaza (“**the estate**”).
2. On 28 January 2022, proceedings were originally issued in the County Court at Clerkenwell and Shoreditch under Claim Number FooYM388.
3. District Judge Bell stayed the Proceedings after consideration of a previous Order issued on 17 September 2021 and further ordered that the claim and counter claim in respect of the service charge element be transferred for determination to First-tier Property Tribunal. The Tribunal only has jurisdiction in respect of the matters which have been transferred to the County Court (see *John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 (LC)). We have no power to permit either party to amend their claim.
4. The Particulars of Claim, dated 11 April 2019, are at p.3 of the Bundle. The Applicant claims arrears of service charges in the sum of £9,581.50 for the period 1 April 2015 to 31 March 2019. There is also a claim for interest in the sum of £1,318.57 plus Claimant’s Solicitors legal costs of £1,101.60 (inc VAT). The parties agreed that this was a matter for the County Court.
5. The Defence is at p.277. The Respondent does not dispute the reasonableness of the day-to-day service charges, but rather the payability of the same. The Respondent raises a number of technical points:

(i) The Landlord has not operated the service charge account in accordance with the terms of the lease;

(ii) The service charge claim is barred by Section 20B(1) of the Act in that relevant costs taken into account in determining the amount of the service charge were incurred more than 18 months before a demand for payment of the service charge was served on the Tenant. It is accepted that Subsection (1) would 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 she would subsequently be required under the terms of her lease to contribute to them by the payment of a service charge.

(iii) The Landlord has failed to make lawful demands for the service charges in the period 1st April 2015 to March 31st, 2019. The Respondent has relied on the provisions of Section 21B of the Act which requires such a demand to be made in accordance with the lease terms and be accompanied by summary of the rights and obligations of Tenants.

(iv) The Respondent claims that the charges made to the sinking fund are not reasonable as they had failed to comply with the requirements of the lease in allocation of these sums.

6. On 2 March 2022, the Tribunal gave Directions. These were subsequently revised on 11 July 2022 and 14 October 2022. Pursuant to those Directions, the following have been exchanged:

(i) The Applicant's Statement of Case in response to the issues raised in the Defence (at p.239).

(ii) A witness statement of Mr Leke Ajayi, the Managing Agent for the Applicant (at p.299).

(iii) A witness statement of Ms Lewinski, the Respondent (at p.657).

The Applicants solicitors has prepared a Bundle of Documents which extends to 947 pages.

The Hearing

7. The Applicant was represented by Mr Conor Kennedy (Counsel). He adduced evidence from his client, South Quay Plaza Estates (Freehold) Limited. Mr Leke Ajayi spoke to and endorsed a witness statement submitted on behalf of the Applicant prepared by Mr Benjamin Foley a Legal Executive who acts on behalf of the instructing solicitors.

8. The Respondent was represented by Mr Palfrey (Counsel). He relied upon the witness statement of his client, Ms Lewinski. Ms Lewinski provided a witness statements at p.657 and Statement of Case at p.277. They also relied on a witness statement prepared by Mr Wood who was previously a board member of the South Quay Plaza Estates (Freehold) Limited(p.279)
9. Mr Conor Kennedy told Tribunal that he was instructed to act on behalf of the Landlord the proceeding day and had little time to familiarise himself with the matters in dispute. The Tribunal queried the matters to be determined. He confirmed that the Claimants seek unpaid service charge amounting to £9,611.50. This sum includes payments due for ground rent which he accepted do not fall within the jurisdiction of the Tribunal. It was agreed by both parties that the sum after deduction of ground rent to be determined by Tribunal is £9,581.50. He also confirmed that these arrears were due in the service charge years 1 April 2015 to 31 March 2019.
10. Mr Palfrey referred us to the items of expenditure listed at p.421 of the bundle. This is entitled '*Application for Payment*' and addressed to Brethertons the solicitors who act on behalf of the Landlords. This is dated 12 November 2018. Mr Palfrey said the charges listed in this document constitute the claim.
11. Mr Kennedy referred the Tribunal to the Hallas report (at p.496). He said that this report prepared by the Consultant Chartered Surveyors in July 2016 is relied upon to calculate the sinking fund charges levied on the leaseholders. He explained to Tribunal that this detailed report identifies a range of property defects throughout the estate which require remediation. He claimed the charges made of the Tenants were based upon the budgets prepared following this report. The Tribunal noted that the budgets were not included within the bundle. Mr Kennedy explained that the reserve fund is allocated to works on the building and the whole estate. He referred the Tribunal to a table at p.508 which provided detail of a reserve fund expenditure over the disputed period.
12. The Counsel confirmed to Tribunal that the Respondent did not dispute the reasonableness of the day-to-day service charges. She accepted that the dispute focused on the payability of the demands and particularly whether they had been properly made.
13. Mr Ajayi, a representative of the managing agent gave evidence to Tribunal and relied upon his witness statement and that prepared by Mr Foley a legal executive with Brethertons.
14. Mr Palfrey for the Claimant queried whether the demands for the service charges in dispute were made of the Claimant. Mr Ajayi explained he and the Managing Agent were instructed from 1 April

2022. He had no personal knowledge of the previous Managing Agent, Rendall & Rittner and the policy they adopted to collection of service charge arrears. Mr Ajayi was unable to provide Mr Palfrey with any evidence in the Bundle to confirm the demands for the service charges had been made of the Claimant.

15. He particularly referred Mr Ajayi to an email dated 25 August 2016 to Ms Lewinski which stated

“Due to your account being placed in breach for non-payment of service charges you have pointed out that you did not receive certain communications. For our part the only things you might not have been sent would have been service charge demands and documentation such as cover letters, budget etc. You would still have been sent year end accounts and S.20 Notices, however I note that you claim not to have received these.”

It is Mr Palfrey’s submission that a rent stop had been placed on Ms Lewinski’s account and that she had not received any of the demands. He went on to propose that there was no evidence to support the submission that the demands had been made. He justified his assertion with the observations that the Applicants had failed to provide in the bundle copy statements, contemporaneous charge demands or evidence that the delivery requirements of the Lease had been satisfied.

16. Ms Lewinski gave evidence to Tribunal. She confirmed that she had not received any of the demands either by email or post. She claimed the first notification she had of these monies being claimed was a copy of an ex parte order sent to her by a former solicitor on 2 June 2021. It is her contention that she had received no advice of these charges prior to that date. She accepts that after that date she was aware of the outstanding monies and has subsequently made a payment of £3,000 on account. It was acknowledged by both parties that this payment has now been credited to her account and is no longer in dispute.
17. Ms Lewinski also commented on the charges made to the sinking fund. She pointed out to Tribunal that the Project Manager BMC was paid £4,500 per month to manage an ongoing project at the estate. The Tribunal were told there is no contract for this work and no description of the works was made available to her or any of the other Tenants on the estate. It was also brought to the attention of the Tribunal that in addition to the charge for retaining the services of BMC further charges were made on a time basis (see p.542) amounting to £5,400 for supervision of works at Nightingale House.
18. Due to the lack of any detail surrounding these payments she argues they are unreasonable. At questioning by Tribunal, she did accept that some management of major works had been carried out and that in her

opinion a payment of one third of the charged monies for supervision would be reasonable.

The Law

19. The relevant legal provisions are set out in the Appendix to this decision.
20. Section 21B(1) of the Act provides that any demand for the payment of service charges must be accompanied by a Summary of the Rights and Obligations of Tenants in relation to service charges. Subsection 3 provides that 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.
21. Under Section 20B relevant costs taken into account in determining the amount of any service charge incurred more than 18 months before a demand for payment of the service charges served on the Tenant shall not be liable to pay those service charges unless they were notified in writing that those costs had been incurred and they would be subsequently required under the terms of his lease to contribute to the payment.

The Lease

22. A Lease dated 30 March 1995 between the Mayor and Burgesses of the London Borough of Tower Hamlets and Miss Marian Lewinski is submitted in the Bundle (p.74). Sections 4C, D, E, F and G relate to the service charges payable and the Lessee covenants under Sections 6C, D and F to satisfy their obligations under the Lease. The Eighth, Ninth and Tenth Schedules of the Lease are also pertinent to Service Charge liability.
23. The Lease at the First Schedule defines the estate as "*ALL THAT area of land at St Katharine Docks St Katharines Way... shown for the purposes of identification outlined in red on the attached plan*". It goes on to define the building "*ALL THAT piece or parcel of land being part of the Estate shown for the purposes of identification only edged blue on the plan attached*".
24. The flat is defined in the Third Schedule as "*part of the building*".
25. Under the Eighth Schedule Part II the Landlord is required to "*annually serve on the Lessee before the first date for payment thereof a written demand for a sum representing the Landlords estimate of the Service Charge attributable to the flat in that year*".

26. The Service Charge attributable to the flat in any financial year is defined at Part II, Section 2 as 14.598% of the Service Charge for the building.
27. The right to collect monies for a sinking fund is granted under the Eighth Schedule, Part I (e). This states “*the costs of providing a reasonable service to finance future costs falling within subparagraphs (a) (b) (c) and (d) hereof (subject always to paragraph 5 below)*”.
28. At Section 11 the Lease states that “*THE provisions of Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to any notice under this Lease*”.

Tribunal Decision

29. The Tribunal has considered the Bundle submitted by the instructed solicitors on behalf of the Landlord Applicant. They have noted the detailed submissions made by the Respondent.
30. The Tribunal are asked to determine whether the sum demanded of the Respondent was properly demanded by the previous Managing Agent, Rendall and Rittner on behalf of the Landlords.
31. There is no documentary evidence in the Bundle of contemporaneous demands for the monies now sought. There are demands in the Bundle for other properties on the estate which are for monies due during the relevant Service Charge period. These are dated at or near the date these charges were incurred (such an example was submitted at p.694 of the Bundle for a neighbour in a nearby building). Counsel for the Applicant admitted to Tribunal that the documentary evidence provided to confirm lawful demands were properly made of the Claimant “*was weak*”.
32. The evidence submitted to Tribunal about outstanding monies due by Ms Lewinski are mostly dated after the relevant Service Charge years. The account history attached to the Particulars of Claim was addressed to Brethertons and dated 31 January 2019. The application for payment contained in Appendix C of Mr Ajayi’s witness statement although dated within the relevant Service Charge years on 12 November 2018 is also addressed to Bretherton’s. Other application for payment issued by Rendall & Rittner for the relevant service years do have the requisite summary of Tenants rights and obligations but there is no evidence that these were received by Ms Lewinski.
33. Counsel for Ms Lewinski made representation to Tribunal that under the lease terms all notices should be served by Recorded Delivery. He contended that a demand for Service Charge constituted a notice. The

Tribunal do not agree with this interpretation of the lease term and conclude it was not necessary for the landlord or landlord's agent to serve the demands in accordance with Section 11 of the lease. Counsel also posited that a rent stop was placed on Ms Lewinski's account after she had entered into dispute over payment of the Service Charges with the Freeholder. He relied on the witness statement made by Mr Ward which at paragraph 6 (p.945) states "*the Directors of South Quay Plaza Estates (Freehold) Limited, were aware that Rendall and Rittner Limited had a policy not to issue Service Charge demands to Leaseholders who are in dispute over Service Charge or who have arrears*". This was corroborated by the email dated 25 August 2016 from Angela Petts (p.433) which advised of the same policy.

34. The Tribunal are not offered any evidence of proper service of the demands for Service Charges on the Respondent. There is no evidence in the Bundle or made in oral statement that contradicts the assertion that a rent stop was made on the account.
35. The Tribunal infer from the lack of documentary evidence submitted in the Bundle to validate the statements made by Mr Ajayi that lawful Service Charge demands were not made of the Respondent. The Respondent denies all knowledge of the Service Charge demands until receipt of the ex parte order in June 2021.
36. After careful consideration the Tribunal has determined that on the balance of probabilities no proper demand for the Service Charges was made during the Service Charge years 1 April 2015 to 31 March 2019. The Tribunal accept the statement made by the Respondent that she was made aware of these Service Charge liabilities on 2 June 2021.
37. There is no evidence offered to the Tribunal that she was made aware of these liabilities prior to the demands being made in June 2021. The Tenant will be able to rely on Section 20B to avoid payment of these charges as she not notified in writing that these costs had been incurred and that she would be liable to pay them.
38. The Respondent has not disputed the reasonableness of the day-to-day service demands but nevertheless the failure to make a lawful demand will protect her from these liabilities.

Reasonableness of Sinking Fund Charges

39. The Tribunal has determined that the Respondent is not liable for the £9,581.50 demanded by the Applicant. The Tribunal has not determined the reasonableness of the BMC management or other costs made against the Sinking Fund Charge. There was a lack of evidence upon which to make a reasoned decision.

Section 20 Order

40. At the Hearing Counsel for the Respondent made an application for a Section 20 order. It was agreed that written submissions on this matter would be made to Tribunal following the issue of the substantive decision. Parties should make any costs representations within 28 days of the date of this decision.

Name: Ian B Holdsworth
Valuer Chairman

Date: 18 November 2022

RIGHTS OF APPEAL

1. 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.
2. 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.
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 appear 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.

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 tenant's 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.

Section 21B

- (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.