FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/LSC/2022/0015**
Property	**:**	**5C Hartham Road London N7 9JQ**
Applicant	**:**	**Five Hartham Road Limited**
Representative	**:**	**Mr Steven Newman, Solicitor, D&S Property Management**
Respondent	**:**	**Ms Anne Bernadette Burns**
Representative	**:**	**In person**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985, together with ancillary costs Orders.**
Tribunal members	**:**	**Mr Charles Norman FRICS, Valuer Chairman** **Mr John Naylor MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing		**5 September 2022**
Date of decision	**:**	**22 October 2022**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £710.89 is payable by the Respondent in respect of the service charges for the years 2019/20 and on account service charges for 2020/21.

(2) The Tribunal refuses applications under section 20C of the Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years

   (a) 25 June 2019 to 24 June 2020
   (b) 25 June 2020 to 24 June 2021 (on account)

2. Directions were issued on 30 March 2022, (amended on 1 April 2022) which required (inter alia) preparation of a Scott Schedule.

The hearing

3. The Applicant appeared by Mr Steven Newman Solicitor of D&S Property Management, the Applicant's managing agents. The Respondent appeared in person, accompanied by a Mr Bowcott.

4. On 2 September 2022, the working day preceding the hearing, the Respondent sent a chronology and supplemental statement. Following discussion with Mr Newman the Tribunal decided to admit those documents as they did not add anything new in principle to matters within the Tribunal's jurisdiction. However, the Tribunal refused to hear submissions in relation to alleged failures of the applicant to comply with the RICS Management Code. This was because that Code is a lengthy and complex document, and no particularity was given as to the alleged breaches. This would therefore have placed the Applicant in an unfair position.

5. The Respondent has made serious allegations against the Applicant claiming that the freeholder's associates had harassed her [72] [1], that external pipework outside her flat had been criminally damaged and that she had been accused of locking the front door to prevent other occupiers entering the building. She had fled several times. The

[1] Bundle references are shown in square brackets

freeholder did not reply to correspondence. There were other serious allegations and the Police had been involved. The freeholder disputes all these allegations. In addition major works are proposed (in the order of £65,000), but that matter is not before the Tribunal.

6. The Tribunal made it clear that its only jurisdiction is to consider the payment of service charges in this case [and ancillary costs orders] and that it will not consider matters outside [those] jurisdiction[s].

7. At the end of the hearing the applicant made oral applications for orders under section 20C of the Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

The background

8. The property which is the subject of this application is a flat on second and third floors of a converted mid terrace Victorian house in Islington. The building contains two other flats and a roof terrace.

9. 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. The Respondent 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.

The issues

10. The Tribunal identified the relevant issues for determination as follows:

    (i) The payability and/or reasonableness of service charges for 2019/20 relating to

        a. insurance £832.69

        b. communal electricity £157.16

        of which the respondent was liable for 31.01% amounting to £306.95.

    (ii) The payability and/or reasonableness of on account service charges for 2020/21 relating to

        a. insurance £1012.34,

b. communal electricity £240.26 and

c. intercom repair £50

of which the respondent was liable for 31.01% amounting to £403.94.

The Applicant's Case

11. Mr Newman referred to title documents which proved that the Applicant was the freeholder. He also referred to the Respondent's lease. The Respondent holds the flat under a lease dated 28 May 1981 which granted a term of 99 years from 24 June 1980.

12. Mr Newman set out relevant clauses in full, which the Tribunal summarises as follows. By Clause 2(e) the lessee covenanted to pay a rateable proportion of costs and expenses of sums expended by the Lessor under Clause 4, of making repairing maintaining painting supporting rebuilding and cleaning all ways passageways pathways and sewers drains pipes easements and appurtenances belonging to or capable of being used by the lessee in common with the lessor or the lessees tenants or occupiers of the other parts of the building… By clause 3, the lessee covenanted to comply with Schedule 1. Under clause 4 (b), the Lessor covenanted with the lessee "to maintain and keep in good repair such parts of the building as are not comprised in the demised premises or releases of other parts of the building and to keep the halls landing and staircases… lighted…"; under clause 4(c) to ensure and keep insured the building against loss or damage by fire explosion storm tempest earthquake and such other risks as the lessor thinks fit in some insurance office of repute…"

13. Schedule 1 set out the service charge machinery. Schedule IV is headed "costs expenses outgoings and matters in respect of which the lessee is to contribute". Paragraph 1 defined these as "all costs and expenses including Value Added Tax incurred and payable by the Lessor for the purpose of complying or in connection with the fulfilment of his obligations under this lease". Paragraph 2 further defines these as "all costs of management of the building including in particular… the costs of collection of all payments under this lease covenanted to be made by the lessee".

14. Copies of end of year certificates for 2020 and 2021 were annexed to the applicants statement of case. In answer to points made by the respondent (see below) Mr Newman submitted that the insurance was not vitiated by the use of the roof terrace. The communal electricity costs were supported by invoices based on actual meter readings. The intercom cable was an appurtenance which the landlord was required to maintain.

15. In the Applicant's Reply to the Respondent's Statement of Case, as expanded by Mr Newman in oral submissions, the Applicants made the following points. The Respondent had not completed the Scott Schedule. She did not agree to proceed to mediation although the Applicant was willing to do so. The roof terrace was not used for industrial purposes. As to the insurance premium, the Applicant's broker had carried out a market test and the premium was the best the broker could obtain [187/188]. The terms of the policy provided that the policy would not be vitiated by breaches of its terms. Cover would only be suspended during any such breach. The insurer would still be required to cover losses if the breach had not increased risk [194].

16. In relation to communal electricity, the Mr Newman submitted that the vast majority of the cost of the electricity arose from standing charges which could not be avoided [93]. He stated "For the 130 days between 3rd August 2019 and 10th December 2019 the actual usage was 7kWh for which the charge was £1.30, the Respondents maximum dispute for that period can be £0.40 as the standing charges cannot be disputed on the Flat B syphoning off grounds. For the 55 days between 11th December 2019 and 3rd February 2020 the actual usage was 2kWh for which the charge was £0.37, the Respondents maximum dispute for that period can be £0.11 as the standing charges cannot be disputed on the Flat B syphoning off grounds. For the 283 days between 4th February 2020 and 12th November 2020 the actual usage was 13kWh for which the charge was £2.42, the Respondents maximum dispute for that period can be £0.75 as the standing charges cannot be disputed on the Flat B syphoning off grounds. For the 283 days between 4th February 2020 and 12th November 2020 the actual usage was 13kWh for which the charge was £2.42, the Respondents maximum dispute for that period can be £0.75 as the standing charges cannot be disputed on the Flat B syphoning off grounds." [93,94]

17. Mr Newman called Mr Zachariou (also known as Zachary) who had provided a signed witness statement. His evidence may be summarised as follows. In 2009 he took a lease of the ground floor flat, 5A Hartham Road. In 2013, he subsequently bought 5B Hartham Road [first floor flat] and at the same time the shares of the Applicant. He denied responsibility for all the Respondent's allegations. He had been interviewed by the Police, but no action was taken against him. He found the Respondent difficult; she had caused him to lose tenants. Previous managing agents Hurford Savi Carr resigned owing to the difficult nature of the Respondent. He had unsuccessfully attempted to the manage the property himself and had then appointed D&S Property Management.

18. Mr Zachariou wanted the property well managed because it would protect his investment. The roof terrace was not being used for industrial purposes and it does meet safety and building regulation requirements. Electricity to the common parts had not been siphoned off as there had been no dramatic spike in electricity bills. There has

never been a door intercom system; the current system allows individual flats to be called from the front door, but the front door cannot be opened remotely from any of the flats. In 2016 he arranged for handsets and individual flats to be replaced but the Respondent refused to allow the contractor into her flat to carry out this work. The surface mounted wiring for the intercom was damaged and this gave rise to a £50 invoice for repair.

The Respondent's case

19. The Respondent submitted a statement of case and supplemental statement. Although not formally described as witness statements these were verified by statements of truth. The Tribunal made clear that it would treat them as witness statements.

20. In 2016/17 the Applicant carried out major works to Flat B and then rented it out with the flat roof below [i.e. that visible from flat C] being used as a roof terrace. This is accessed via a window in the common parts. The roof terrace lacked planning permission and Islington Council ordered its removal in 2018. [The Tribunal was provided with a copy of the planning enforcement notice]. The roof terrace had been used as an industrial workshop. The property had been seriously mismanaged.

21. The Respondent referred to many other matters not before the Tribunal including the major works. In relation to matters before the Tribunal she stated, "I propose to pay the amount demanded and asked the agent to provide me with supporting documentation/invoices and additional information which will inform the court in deciding if the charges are reasonable in the circumstances." In relation to building insurance the Respondent stated "I am relieved if the property is properly insured and of course am liable and willing to pay my share. I have however asked but never received clarification during this time [that] insurers are aware that the roof terrace of Flat B was used for industrial work and as a workshop with machinery and tools."

22. In relation to electricity the Respondent asserted that the tenant of Flat B had siphoned off communal electricity to power drills saws and machinery. He ran cables from the roof out of the communal window to sockets in the hall. He left Flat 5B at the beginning of August 2020. She also submitted that the tariff was the highest possible.

23. As to the entry system to the front door, the Respondent asserted that the freeholder disabled the respondents front door entry in 2016/17; she must go down several flights of stairs to let anyone in. He has failed to rectify this. The Respondent installed a bell which had been disabled.

Findings

24. In light of the Respondent's statements, the Tribunal enquired as to whether the insurance issue had been admitted. However, the Tribunal concluded that the Respondent's position was equivocal.

25. The Tribunal prefers the submissions and evidence provided by the Applicant. It accepts the evidence that the insurance costs were properly incurred following market testing and also finds that the premia are within the level it would expect for a building of this nature. It accepts the submission that whatever the status of the roof terrace, this would not vitiate the insurance policy. As to electricity it accepts the evidence and submissions of the Applicant. It notes that the Respondent did not produce any evidence of alternative lower tariffs. As to the entryphone cabling, it finds that this was a "part of the building as are not comprised in the demised premises" falling within Clause 4(b). The Tribunal therefore finds that the Respondent is liable for her share of this cost.

Applications under s.20C and Sch 11 Paragraph 5A

26. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that both applications be refused.

Name: Mr Charles Norman **Date:** 22 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).