



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

**Tribunal Case reference** : **LON/00AZ/LLD/2022/0001**

**Property** : **Flats 1 and 2, 59 Waldram Park Road, London SE23 2PW**

**Applicant** : **Engel Khoffmann (both flats)**

**Representative** : **In person**

**Respondent** : **Eurocent (London 1) Limited**

**Representative** : **Freemans Solicitors**

**Type of application** : **Determination of administrative charges**

**Tribunal Judge** : **Judge Adrian Jack, Tribunal Member Rachael Kershaw**

**Date of directions** : **16<sup>th</sup> November 2022**

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**DECISION**

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**IMPORTANT – COVID 19 ARRANGEMENTS**

**With the parties' agreement this matter was determined on paper.**

## Background

1. The premises originally comprised retail accommodation on the ground floor and two flats above. The landlord converted the ground floor accommodation into residential. There are now five flats in the premises.
2. On 21<sup>st</sup> January 2020 the landlord (the respondent to the current application) issued proceedings in the County Court Money Claims Centre under claim number G10YX061. The tenant (the applicant in the current application) filed a defence.
3. The matter was then transferred to this Tribunal, where it was heard as a “double-hatted” case. This meant that those matters within the Tribunal’s jurisdiction were determined by the Tribunal consisting of Judge Angus Andrew and Tribunal Member Andrew Lewicki FRICS and those matters within the County Court’s jurisdiction were determined by Judge Andrew, sitting as a district judge in the County Court. This “double-hatted” tribunal gave its decision on 27<sup>th</sup> November 2020.
4. The outcome of the decision of 27<sup>th</sup> November 2020 reads as follows:

### “Summary of the decisions made by the Tribunal

1.The following sums are payable by... Engel Khoffman to Eurocent (London 1) Limited:

- (i) Service charges of £3,579.88; and
- (ii) Administration charges of £96.00; and
- (iii) The tribunal hearing fee of £200.

### Summary of the decisions made by the Court

2.The following sums are payable by Engel Khoffman to Eurocent (London 1) Limited by 26 January 2021:

- (iv) Contractual interest at 4.75% in respect of the service charges under paragraph 32 of the fourth schedule to the leases calculated from the dates of demand to 29 December 2020: £344.74; and
- (v) Legal costs under paragraph numbers 8.1 and 27.1 of the fourth schedule to the leases: £2,327.80.”

5. The decision identified the bases on which costs could be claimed as these:

“21. By paragraph 8.3 of the fourth schedule the tenant covenants to pay all costs incurred by the landlord in the ‘enforcement (whether by proceedings or otherwise) of: ...The payment of any arrears of Rent Interim Charge or Service Charge or interest payable thereon.’

22. By paragraph 27.2 of the fourth schedule the tenant covenants to indemnify the landlord against any costs incurred ‘relating to or arising from any breach non observance or non

performance by the Tenant of any of the Tenant's obligations under this lease.”

6. The decision analysed the costs issues as follows:

“46. At the hearing Mr Beeston [counsel for the landlord] confirmed that the [landlord] was claiming contractual costs under the terms of the leases. Shortly before the hearing a cost schedule was sent to the tribunal and Mr Khoffman although it was only brought to my attention during the hearing. In total the applicant claimed costs of £7,655.40. Following the hearing I issued directions giving Mr Khoffman the opportunity to respond by 17 November 2020 and the [landlord] the opportunity to reply by 24 November 2020. No response from Mr Khoffman was forthcoming.

47. Mr Beeston relied on the contractual right to recover costs pursuant to paragraphs 8.3 and 27.2 of the fourth schedule to the leases. As indicated Mr Khoffman did not challenge the applicant's entitlement to costs despite being given the opportunity to do so.

48. I am satisfied that the landlord is entitled to an order for the recovery of its costs against Mr Khoffman, as a matter of contractual entitlement. In respect of the County Court proceedings the applicant is entitled to its costs on an indemnity basis under Rule 44 of the Civil Procedure Rules because of the contractual entitlement. In practical terms this means that the court will give the benefit of the doubt to the applicant in terms of whether costs are reasonably incurred or reasonable in amount.

49. Section 51 of the Senior Courts Act and the Civil Procedure Rules do not apply to the tribunal proceedings, which are governed by section 29(1) of the Tribunals, Courts and Enforcement Act 2007 and the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In practical terms this means that the tribunal is a non-costs shifting environment in contrast to the County Court.

50. Consequently after the matter was transferred to the tribunal on 20 July 2020 the applicant's costs may only be recovered as a variable administration charge and are subject to the provisions of section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act [2002] and are only payable to the extent that they are reasonable. The applicant must first issue a demand for those costs in conformity with the Schedule 11, giving Mr Khoffman the right to challenge those costs in the tribunal, should he so choose. Consequently it only falls to me to assess the applicant's costs incurred to 20 July 2020, reminding myself that the assessment is on the indemnity basis.”

7. The judge did then proceed to assess the County Court costs. We should point out that Mr Khoffmann's failure to participate in these earlier proceedings was not his fault. The Tribunal wrongly recorded his email address with the spelling "Khoffman" rather than "Khoffmann" (a misspelling continued in the decision just cited), so he never received relevant notifications. A complaint to HMCTS was subsequently upheld, but Mr Khoffmann did not seek a rehearing.
8. We gratefully adopt Judge Andrew's analysis of the costs regime in this Tribunal under the 2004 Act. Paragraph 2 of Schedule 11 to the 2002 Act provides: "A variable administration charge is payable only to the extent that the amount of the charge is reasonable."
9. The costs which the landlord seeks to recover are as follows. First, there is a bill of 27<sup>th</sup> August 2020 for £2,502.00 dealing with matters leading up to the Tribunal hearing. Second, an invoice of 27<sup>th</sup> November 2020 claims fees in respect of the preparation for the hearing and the hearing itself. These total £4,160.00, including counsel's brief fee of £900 plus £180 VAT. Third, an invoice of 1<sup>st</sup> February 2021 was raised for £840 in respect of post-decision analysis and advice.
10. The tenant submits that these invoices amount to false billing. He argues that the first two invoices were not produced at the earlier hearing. That in our judgment is irrelevant (even if it were the case). The solicitors were entitled to bill for their services.
11. That, however, leaves the question of the reasonableness of the costs incurred. We remind ourselves that this was a claim for less than £4,000 in service charges. The landlord had professional managing agents, who would have been perfectly able to act before the Tribunal in this matter. We accept that the size of the claim is not necessarily determinative of the reasonableness of instructing solicitor and counsel. There are claims where even a small amount of service charge raises important issues. This, however, is not such a case. In our judgment, it was unreasonable to instruct solicitor and counsel to appear in this straightforward matter before the Tribunal and incur costs significantly greater than the amount in dispute.
12. That said, because this matter started in the County Court and was transferred, it was reasonable for the landlord to have some advice from its solicitors. Mr Khatri, who had conduct of the matter, had an hourly rate of £250, which we consider reasonable. Four hours of advice would have been reasonable.
13. Accordingly a figure of £1,000 plus VAT of £200 is in our judgment reasonable and we allow that figure. The amount in excess of that sought by way of administrative charges we disallow.

## **DECISION**

We allow £1,200 by way of administration charges and disallow the balance claimed by the landlord.

**Judge Adrian Jack    16<sup>th</sup> November 2022**