



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

Case reference : **LON/00AE/LAC/2021/0008**

Property : **135 Chamberlayne Avenue,
Wembley,
Middlesex, HA9 8ST**

Applicant : **Mrs Lin Tai Wan**

Representative : **Mr Noor Kapadia**

Respondent : **FirstPort Property Services Limited**

Representative : **Mr James Castle of Counsel**

Type of application : **For the determination of the
liability to pay and reasonableness
of service charges (s.27A Landlord
and Tenant Act 1985)**

Tribunal member(s) : **Judge Professor Robert Abbey
Ms Marina Krisko FRICS**

**Date of original
decision** : **16 January 2023**
Date of correction : **17 February 2023**

RULE 50 CORRECTION OF DECISION

1. In the original decision the tribunal determined that (*inter alia*) the respondent must within 7 days of the date of the determination credit the applicant's service charge account in the sum of £3,314.78 (i.e. the total sum comprised in the dispute).
2. In paragraph (8) of the original decision it was stated that "*This being so the Tribunal determined that the service charge of £3, 314.78 was reasonable and payable.*" This was a manifest error because the

applicant was completely successful in the application. The error arose because the word “not” was mistakenly omitted from the original sentence that should have read “*This being so the Tribunal determined that the service charge of £3, 314.78 was not reasonable and payable.*”

3. To correct this error the Tribunal applies Rule 50 of the of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) and substitutes the words set out above for the incorrect wording also set out above. Therefore, clause (8) of the original decision should be read as amended above by the inclusion of the word “not”.

Name: Prof Robert M Abbey

Date: 17 February 2023



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

Case Reference : **LON/00AE/LAC/2021/0008**

Property : **135 Chamberlayne Avenue, Wembley,
Middlesex, HA9 8ST**

Applicant : **Mrs Lin Tai Wan**

Representatives : **Mr Noor Kapadia**

Respondent : **FirstPort Property Services Limited**

Representative : **Mr James Castle of Counsel**

Type of Application : **For the determination of the liability to
pay and reasonableness of service
charges (s.27A Landlord and Tenant Act
1985)**

Tribunal Members : **Judge Professor Robert Abbey
Ms Marina Krisko FRICS**

**Date and venue of
Hearing** : **16 January 2023 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **16 January 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that: -
- (2) The respondent must within 7 days of the date of this determination credit the applicant's service charge account in the sum of £3,314.78 (i.e. the total sum comprised in the dispute);
- (3) The Tribunal makes a Section 20C Order in favour of the applicant such that the respondent may not seek to recover costs of and occasioned by these proceedings through the service charge; and
- (4) The Tribunal makes an Order for the return of the £100 application fee and £200 hearing fee being the total Tribunal fees in the sum of £300, such sum to be paid by the respondent to the applicant within 21 days from the date of this determination.

The applications and background

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 charge payable by the applicant in respect of service charges payable for services provided for **135 Chamberlayne Avenue Wembley Middlesex HA9 8ST** (the property) and the liability to pay such service charge.
2. The Tribunal were concerned with the reasonableness and payability of service charges with first a s.27A of the 1985 Act determination in respect of service charges arising in the property and in the second application the applicant/respondent seeks a determination pursuant to s.20c of the 1985 Act.
3. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

4. The face-to-face hearing took place on one day in January 2023, (16th), when the respondent was represented by Mr Castle of Counsel, and the applicant appeared in person but assisted by and represented by Mr Kapadia.

5. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.
6. The Tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The documents are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties.

Decision

7. The Tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. At the start of the hearing Counsel for the respondent referred the Tribunal to an email from his instructing solicitors that was issued of 13th January 2023 which stated that -

“Notwithstanding its position on recoverability, after much consideration, on this occasion only and entirely on a commercial basis, our client:

- (i) has agreed to credit the Applicant’s service charge account in the sum of £3,314.78 (i.e. the total sum comprised in the dispute);
- (ii) will not oppose the Section 20C Application (i.e. will not seek to recover costs of and occasioned by these proceedings through the service charge); and
- (iii) will not oppose an application by the Applicant for the return of the £100 application fee.”

8. Subsequently, Mr Castle further confirmed that his client would also not oppose the return of the hearing fee of £200. Mr Kapadia confirmed that the applicant reluctantly accepted the offer. This being so the Tribunal determined that the service charges of £3, 314.78 was reasonable and payable. It also determined that the Tribunal fees of £300 in total were repayable by the respondent to the applicant.

9. Application for a S.20C order

10. It is the tribunal’s view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the concession made by the respondent, the tribunal determines that it is just and equitable in the circumstances that there be an order be made under section 20C of the 1985 Act. As such these costs may not be included as a service charge expense.

Name: Judge Professor Robert
Abbey

Date: 16 January 2023

Appendix of relevant legislation and rules

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.

ANNEX - 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 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.