FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2022/0313**
Property	**:**	**58 Maitland Court, Lancaster Terrace, London W2 3PE**
Applicant	**:**	**Maitland Court Limited**
Representative	**:**	**Mr Peter Jolley counsel instructed by Wagner & Co, Solicitors**
Respondent	**:**	**Mr Khalid Qayyum Rana (1)** **Mrs Rubanashafi Rana (2)**
Representative	**:**	**Mr Rana in person for himself and Mrs Rana**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985; Section 20C application. Rule 13 costs application.**
Tribunal members	**:**	**Mr Charles Norman FRICS Valuer Chairman** **Mrs Louise Crane MCIEH**
Date and Venue of hearing	**:**	**3 April 2023** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**10 April 2023**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £1063.97 is payable by the Respondent.

(2) The application for an order under section 20C of the Act is refused.

(3) The application for a costs order under rule 13[1] is refused.

Reasons

(See Appendix of relevant legislation)

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 unpaid "Interim Charge" service charges payable by the Respondent in respect of the period 24.06.2019 to 16.09.2022.

2. It also seeks annual "Further Interim Service Charges" for the years 2018, 2019, and 2020. In aggregate the totality of the claim is £1,907.76, following minor amendment.

3. At the hearing, the applicant made a claim for costs under rule 13, having previously circulated a Form N260 in the sum of £7,627.50.

4. Also at the hearing, the respondent made an application for an order under section 20C of the Act.

The hearing

5. The Applicant was represented by Mr Jolley of counsel. The Respondent appeared in person for himself and Mrs Rana.

The background

6. The property which is the subject of this application is a flat within a substantial block of 90 flats in Central London. The applicant is a management company in which the lessees hold shares. Unfortunately, there has been a history of disputes between the applicant and respondent. A previous application was made in which resulted in a settlement following mediation in 2019. The application in the present

[1] r.13, The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

proceedings was dated 12 October 2022. On 22 November 2022, a further claim was issued in the County Court Business Centre in respect of other items. Counsel assured the Tribunal that there was no duplication of proceedings. The subject property is sublet and all material times the respondent has lived elsewhere in Northwood.

7. Neither party requested an inspection, and the Tribunal did not consider that one was necessary.

The issues

8. At the start of the hearing and with reference to the applicants' skeleton argument the applicant identified the relevant issues for determination as follows:

   (i) The payability of shortfalls in the quarterly Interim Charge of £43.20 for the period 24.06.2019 to 16.09.2022. A credit of £205.71 was also applied in 29.09.2020.

   (ii) Further Interim Charges:

   2018: £474.17

   2019: £315.59

   £2020: £804.23.

   The total claimed was £1,907.76.

   (iii) During the hearing, it emerged that the main issue, was whether or not service charge demands had been correctly served on the respondent.

The Lease

9. The subject lease was granted on 18 March 2009 for a term of 999 years from 1 January 2008. It was a surrender and renewal. There were only two points of construction on the lease (see below). Therefore, the service charge provisions of the lease can be addressed very briefly. By clause 4 (3) the lessee covenanted to pay the Interim Charge and Further Interim Charge and the Service Charge at the times and in the manner provided in the schedule all such charges to be recoverable in default as rent in arrears. The Interim Charge is defined at paragraph 1(3) of the fifth schedule. The Further Interim Charge is defined at paragraph 4 of the fifth schedule.

The Applicant's Case

10. The applicant's statement of case may be summarised as follows. The respondents admitted that all sums claimed are chargeable under the lease but do not accept that the sums are payable because (1) they have not been properly demanded and (2) they are not reasonable in amount. Each of the amounts in issue was validly demanded from the tenants by sending demands to them at their address in Northwood. None of the notices suffer from technical defects nor is this alleged. Mr Tambaros [Director of the managing agent] confirms that the demands were sent by post. The lease does not compel service by any means but does include a deemed service provision with service effected at the lessees' last known address.

11. The respondents have not made clear what is in dispute and why. They have not specified what if any sums are unreasonably high or works carried out to poor standard.

12. In relation to paragraph 7 of schedule 5 of the lease, which states "as soon as practicable after the expiration of each accounting period there shall be served upon the lessee by the lessor or its managing agents a certificate (where appropriate endorsed by accountants) containing the following information…", this was not a condition precedent to service of demands for payment. The accountants' reports were signed electronically using an italicized signature. Reference was also made under clause 8(2) to section 61 of the Law of Property Act.

13. The applicants' alternative cases were (i) service by email was good service and (ii) in the second alternative demands now served were valid within the period unaffected by section 20B of the Act [18 months prior to demand, see legal appendix].

The Applicant's witness

14. Mr Tambaros was called, having submitted a signed witness statement. He is a director of Fortune Block Management Ltd the managing agents for Maitland Court. He took up this position in January 2019 and is responsible for the management of approximately 70 buildings. The subject block is triangular and located on the one-way system by Lancaster Gate underground station. There are 90 flats arranged over 9 floors. In his witness statement he stated that each demand was sent to the respondent's home address by post, Mr Rana having previously said to Fortune management that he was not prepared to accept service of demands by email. Mr Tambaros also referred to section 20 notices dated 13th of July and 17 October 2020 in relation to the lease and stated that the notices would have been sent to Mr Rana by email.

15. However, in cross examination, when Mr Tambaros was asked whether he had provided invoices by post his reply was no, only emails. He also explained that owing to the age of some of the residents at Maitland Court, different arrangements applied as compared with other properties under management. In particular his company accepted cheques as opposed to bank transfers and engaged in correspondence as opposed to making exclusive use of email. Mr Tambaros stated that in light of Mr Rana's request, someone in the office would have posted invoices.

The Respondent's case

16. The respondent's case as set out on 5 January 2023 may be summarised as follows. Service charge accounts were illegible and the accounts unsigned and undated by the agent and accountant; no accounts had been provided in respect of Maitland Court Ltd; a request was made for section 20 notices; questions were raised in relation to the delay in issuing accounts; budgets and forecasts had not been provided; the landlord directors had no control over Fortune Management; there had been hesitation to release information in relation to statement of accounts; a request was made for other lessee email addresses; a question was raised in relation to internal and external redecoration dates; questions were raised in relation to the Memorandum and Articles of Association for Maitland Court Ltd.

The Respondent's witness

17. Mr Rana gave evidence having submitted a signed witness statement. His evidence may be summarised as follows. Mr Rana is a chartered accountant, living in Northwood. His statement is made on behalf of himself and his wife the second respondent. The accounts were only sent to him on 20 November 2022 in respect of the years 2018, 2019, and 2020 together with copy payment demands. The lease requires a certificate, where appropriate endorsed by accountants, to be served on the lessee by the lessor or its managing agents under clause 7 of the fifth schedule. Mr Rana was suspicious of the documents because the service charge accounts for the year ending 31 December 2019 had a different signature to the others. The lessor is entitled to serve interim service charge demands on 1 January, 1 April, 1 July and 1 October each year whereas the dates on the demands are the usual quarter days.

18. Clause 8 (1) provides "any notice in writing certificate or other document required or authorised to be given or served hereunder shall be… sufficiently given if served or if it is left at the last known place of abode or business the lessee…" Therefore, service by email is not good service. Mr Rana had specifically informed the applicant that he was not prepared to accept service of documents by email. Mr Tambaros had not provided evidence of covering letters to invoices said to have been delivered to the address in Northwood. The only demand received

by post was dated 16 January 2023 which related to the service charge quarter commencing 1 January 2023.

19. During cross-examination Mr Rana accepted that the amounts in issue were themselves reasonable but maintained that no [postal] written demands had been received. He had however, received emailed demands. He operated a number of different email accounts relating to his business affairs and the emails had not come to his attention prior to these proceedings. The quarterly interim charges were paid by standing order.

Findings

20. The Tribunal pointed out that its only jurisdiction related to the reasonableness and payability of service charges. It had no jurisdiction to deal with issues relating to company law matters, the management company or the accounts.

21. The Tribunal found Mr Tambaros to be an honest witness. However, whilst it accepts his evidence that different procedures are in place for dealing with Maitland Court as compared with other managements, he did at one point say that invoices would have been emailed and then stated that someone in the office would have posted the invoices to respondent. He also made reference to section 20 notices being emailed, although counsel make clear that section 20 notices are not relevant to this case.

22. The Tribunal also found Mr Rana to be an honest witness who was prepared to make appropriate concessions during cross-examination. Mr Rana was adamant that he had never received written demands by post for the period in issue prior proceedings in this case.

23. The Tribunal prefers Mr Rana's evidence on this point. It finds that Mr Tambaros did not have personal knowledge of the posting of individual demands. Further there were no covering letters or any other documentary evidence to support the applicant's case. The Tribunal therefore finds on the balance of probabilities that the relevant demands were not posted to Mr Rana until 20 November 2022.

24. The Tribunal accepts the submissions of Mr Jolley in relation to paragraph 7 of schedule 5 of the lease. It finds that service of the certificate there mentioned is not a condition precedent of service charge demands being made. The Tribunal also agrees with Mr Jolley that the accounts have been signed sufficiently by the accountants and that the italicised signatures are intended to be treated as a signature. Although the italicised signature does not appear on the 2018 accounts those are reproduced on the 2019 accounts where the italicised signature is used.

25. The Tribunal does not accept Mr Rana's contention that the slight difference in date on the invoices as compared with the lease payment dates operates as a defence. No reasonable recipient would have misunderstood what the demands related to, and they are therefore valid: *Mannai Investment Co Ltd v Eagle Star Assurance* [1997] UKHL 19.

26. The Tribunal is unable to accept Mr Jolley's submission that service by email is sufficient service. The deeming provision in Clause 8 (1) above is a clear reference to paper documents and not emails. Section 61 of the Law of Property Act 1925 refers to the construction of expressions used in deeds and other instruments and is not relevant to matters in issue.

27. The consequence of these findings is that only demands made in the 18 months prior to receipt of the documents by Mr Rana are payable, by virtue of section 20B of the Act. As Mr Rana has accepted that these were received on 20 November 2022 [127][2] the relevant period commenced on 21 May 2021. This relates to 6 shortfall amounts, each of £43.29 totalling £259.74. The Tribunal finds these payable.

28. In terms of the Further Interim Charges, the applicants accepted in this event that only the 2020 amount could be payable. The Tribunal accepts the applicants' submission that the Further Interim Charge would be referable to expenditure made during the 18-month period. It therefore finds the sum of £804.23 also payable.

29. The Tribunal therefore finds that the total payable is £1,063.97.

Respondents s.20C Application

30. At the end of the hearing, the respondent made an application for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that the application be refused. The reasons are (i) that the applicant has been the more successful party as more than half the amount in contention has been found payable, (ii) the property is a self-managed block owned by the residents and (iii) even a successful party can have no expectation of a s. 20C order: *Tenants of Langford Court v Doren Limited* [2001] 3WLUK 935.

Applicant's application for Costs under rule 13

31. The applicant seeks a costs order under rule 13(1)(b), based on the respondent's unreasonable conduct. The unreasonable conduct was said to be refusing to proceed with mediation in the Tribunal.

2 Square brackets refer to bundle pages.

32. Rule 13(1)(b) is engaged where a party has acted "…unreasonably in bringing, defending or conducting proceedings…". The Tribunal's power to award costs is derived from section 29(1) of the Tribunals, Courts and Enforcement Act 2007, which provides:

> *"(1) The costs of and incidental to –*
> *(a) all proceedings in the First-tier Tribunal, and*
> *(b) all proceedings in the Upper Tribunal,*
> *shall be in the discretion of the Tribunal in which the proceedings take place."*

33. It follows that any rule 13(1)(b) order must be limited to the costs of and incidental to the proceedings before this Tribunal, namely the section 27A application.

34. The Tribunal referred to the Upper Tribunal's decision in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC), which outlined a three-stage test for deciding Rule 13 costs applications. The Tribunal must first decide if there has been unreasonable conduct. If this is made out, it must then decide whether to exercise its discretion and make an order for costs in the light of that conduct. The third and final stage is to decide the terms of the order.

35. At paragraph 24 of Willow Court the UT said *"We see no reason to depart from the guidance in Ridehalgh v Horsefield at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?"*

36. At paragraph 43, the UT emphasised that Rule 13(1)(b) applications *"…should not be regarded as routine…"* and *"…should not be allowed to become major disputes in their own right."*

37. The threshold for making a rule 13(1)(b) costs order is a high one. As stated at paragraph 24 of Willow Court *"…the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level."*

38. The Tribunal first considered whether the respondent had acted unreasonably in defending or conducting the proceedings. When doing so, it considered only the period from 12 October 2022 (the date the application was made until 6 April 2023. The respondents' conduct outside this window not relevant, as the Tribunal is only concerned with the conduct of the proceedings.

39. The Tribunal refers to the directions of 19 October 2022 state *"(5) this case may be suitable for mediation. Agreements to mediate can be obtained from the case officer. If both parties email sign agreements by 21 November 2022 giving any dates to avoid in the following three weeks, the Tribunal will try to offer mediation at a time and date to be notified. However even if the parties agree to mediate, the following directions must still be complied with.*"

40. The Tribunal notes that mediation is not mandatory under the directions. There is therefore no breach of directions in not proceeding to mediation. Secondly as the hearing itself took half a day, proceeding to mediation may have incurred unnecessary costs had the mediation proved unsuccessful. Refusing to proceed with mediation in this case was therefore not unreasonable conduct within the meaning of *Ridehalgh v Horsefield*. Therefore, the application fails. It is unnecessary for the Tribunal to proceed to consider the second and third steps in applying *Willow Court* (see above).

Name: Mr Charles Norman FRICS **Date:** 10 April 2023

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 (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 tenants 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).