



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

Case reference : **LON/00AY/LSC/2022/0377**

HMCTS code : **P: PAPERREMOTE**

Property : **Flat 4, 31 Crescent Grove, London SW4
7AF**

Applicant : **Sven Atherden**

Representative : **-**

Respondent : **Thirty One Crescent Grove Limited**

Representative : **David Bingham**

Type of application : **For the determination of the liability to
pay service charges under section 27A
of the Landlord and Tenant Act 1985**

Tribunal member : **Judge D Brandler**

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

Date of decision : **15th May 2023**

DECISION

This has been a remote hearing on the papers which has not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that I was referred to are in a bundle of [111] pages, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the sum of £250 is payable by the Applicant in respect of the stairwell redecoration service charge in the period 2021/22
- (2) The tribunal further determines that the charge of £600 paid by the applicant in relation to the roof repairs be included in the service charge and apportioned accordingly
- (3) The tribunal makes the determinations as set out under the various headings in this Decision
- (4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (5) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of partial reimbursement of the tribunal fees paid by the Applicant

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 Applicant in respect of the service charge years 2021/22.
2. The Tribunal issued directions on 15/12/2022.

The background

3. The property which is the subject of this application is a one bedroom flat on the second floor of a converted Georgian house containing 6 flats. The applicant is not resident in the property. Tenants occupy his property. Mr Bingham is the respondent’s company secretary and he manages the repairs and maintenance of the communal areas. He holds the leasehold interest in two of the six flats in the building and he lives in one of those flats.

4. 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.
5. The Applicant 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

6. The issues subject to the application are detailed in the headings below
7. Having considered all the documentary evidence provided, the tribunal has made determinations on the various issues as follows.

Stairwell redecoration expenses: amount claimed: £3,880

8. The applicant does not dispute liability to pay service charges, but claims that the paperwork relating to these works is not legally viable. The reason for this, he says, is because the landlord provided the documentation only on 06/11/2022, a week after the notice period expired further to a Section 22 Notice. The applicant argues that the invoice is missing the company name and address, their company logo is different from the one appearing on the original quotation, and the description is lacking detail with no indication of the materials used despite. He further complains that a £180 premium added to the original quotation for the use of a higher quality paint which he says cannot be verified. The applicant asserts that the landlord previously admitted to him that he had no paperwork to support the expense as he had paid in cash.
9. It is not in dispute that works were carried out. In photographs submitted by the applicant he argues that the works were of poor quality, citing the wrong paint on the handrail, and patches in the decoration on the walls.
10. In the response sent by email on 27/01/2023 [25], Mr Bingham confirms that the applicant had sight of all the invoices, other than the stairwell redecoration invoice, when the applicant visited the building towards the end of 2022. He confirms that he subsequently sent that invoice to the applicant.
11. In relation to the allegation of the authenticity of the staircase redecoration invoice, Mr Bingham assured the applicant that was genuine and confirmed that it is £100 less than the final estimate because Mr Bingham carried out some of the works himself: he sourced and fitted the light shades and re-fixed the electric cable which runs all

the way up the staircase. However, he confirms the final charge is £280 more than the initial estimate because of the applicant's insistence that the decorator use a higher grade paint than was originally specified.

12. Mr Bingham also states in his response that the handrail was rubbed down and repainted with Dulux trade paint designed for wood. In relation to the walls and in response to the photographs showing patches on the walls, he says that the walls are covered in woodchip paper, and that any removal is difficult and time consuming and often requires replastering. He states that the redecoration was not intended to be a complete renewal of the staircase wall covering. [74]

The tribunal's decision

13. The tribunal determines that the amount payable by the applicant in respect of redecoration of stairwell is limited to £250.

Reasons for the tribunal's decision

14. The amount claimed is £3,880. This equates to a sum in excess of £250 per flat which requires compliance with consultation in accordance with s.20 Landlord & Tenant Act 1985, and the Service Charge (Consultation Requirements) (England) Regulations 2003/1987. The Directions raised s.20 as an issue, but no documentation in this regard was provided. The tribunal assumes therefore that no s.20 consultation was carried out. There is no evidence that an application for dispensation was made to remedy this defect.
15. It is not in dispute that works were carried out albeit the applicant complains about the quality of the finish but it is difficult to ascertain from the limited evidence whether the charges were reasonable. In any event, in the absence of any s.20 Consultation, the relevant contribution by the applicant is limited to £250.

Omission of repairs paid by the applicant, not included in the service charge: £600

16. The applicant argues that this is a building expense commissioned by him to protect his property and the building from "continuous water infiltration". The respondent has excluded this expense from the service charge and refused to share it with the other leaseholders even though the repairs are said to protect all the other flats in the building.
17. In the response email from Mr Bingham, he argues
 - (i) that any work over £500 is to be approved by the majority of the lessees, which he says was not.

- (ii) That he had been on the roof himself to remedy the leak two weeks prior to the builder's works, and that the applicant knew he had carried out such works
 - (iii) That the work carried out by Mr Bingham was charged only for material at £23.17 and the work charged by the builder was excessive and a duplication
18. The applicant complains that the roof has been leaking for the past 15 years, and that none of the attempts by Mr Bingham to fix it have solved the problem.

The tribunal's decision

19. The tribunal determines that the sum of £600 for roof works should be included in the service charge and be apportioned between the leaseholders accordingly.

Reasons for the tribunal's decision

20. The Tribunal note the disagreements between the applicant and Mr Bingham as to how works should be commissioned/carried out. There appears to have been a custom and practice which involved Mr Bingham taking responsibility for managing the upkeep of the property, which appears not to have been challenged until this point, but no documentation has been provided to establish the basis for this. Nor is there any reference to authority in the lease for the requirement for a majority vote for works, or a cut off sum of £500. It was not clear whether had the works been only £500 that this would have been included in the service charge.
21. In relation to the roof, Mr Bingham's evidence is somewhat contradictory. On the one hand Mr Bingham asserts that he had already carried out the works to the roof at the cost of £23.17 for materials prior to the roof contractor attending. It is apparent from correspondence that Mr Bingham found the contractor on the roof painting a layer of Ultraflex over the same area Mr Bingham claims to have resolved. Mr Bingham objected to the charge of £600 (£450 for labour and £150 for materials) yet in the same email dated 22/09/2021, Mr Bingham reports that he has asked that builder for a quote to stop the water coming into his kitchen window [100]. It is not clear whether Mr Bingham asserts that the problem he is experiencing with his kitchen window is the same as experienced by the applicant.
22. There is ample correspondence in the bundle to suggest that the roof works had been discussed and there was support for such works to be commissioned by the applicant from one other leaseholder.

23. It is difficult to see how the charge of £600 was not reasonably required if the tenants in the applicant's flat were experiencing water ingress, and which may not have been resolved by Mr Bingham's repairs. The most duplication is therefore a cost of £23.17 for materials claimed by Mr Bingham. The Tribunal therefore finds that the charge of £600 is reasonable and payable and should have been included in the service charge account to be apportioned between the leaseholders.

The failure to provide certification of service charge summary

24. The applicant argues that the service charge summary is not certified by a qualified accountant or a statutory auditor. He further asserts that the landlord dispensed with the service of the accountant in 2021 without the consent of the leaseholders.

The tribunal's decision

25. The lease does not specify accounts to be certified by a qualified accountant.

Reasons for the tribunal's decision

26. Mr Bingham has been managing the service charges for some years. This appears to have been either by consent of the other leaseholders or by way of his appointment as Company Secretary and does not appear to have been in issue until recently.
27. There are no accounts upon which to determine reasonableness or payability.

Application under s.20C and refund of fees

28. The applicant made no application for an order under s.20C, and none is made.
29. Having taken into account the determinations above, the tribunal orders the Respondent to refund £100 being the fees paid by the Applicant to this Tribunal within 28 days of the date of this decision.

Name: Judge D Brandler

Date: 15th May 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.

Service Charges (Consultation Requirements) (England) Regulations 2003

6. Application of section 20 to qualifying works

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

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).