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

Tribunal Case Reference	**:**	**LON/00BK/LSC/2022/0349**
Property	**:**	**Flat 3, Foss House, Carlton Hill, London NW8 9UY**
Applicant	**:**	**Maria De Freitas**
Respondent	**:**	**Westminster City Council**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mr S Johnson MRICS**
Date and venue of Hearing	**:**	**12th May 2023** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15th May 2023**

DECISION

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(1) The service charges claimed by the Respondent from the Applicant for the four years 2019 to 2023 inclusive are reasonable and payable.

(2) The Tribunal has not considered making costs orders because the Respondent has stated that they will not seek any of the costs of these proceedings from the Applicant.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The subject property is a flat on the first floor of a 3-storey purpose-built block of 6 flats and the Applicant is the assignee of the lease of that property. The block is one of 5 on the Carlton Hill Estate, for 3 of which the Respondent no longer holds the freehold following a process

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of enfranchisement by the lessees. It is still possible that the other two, including the Applicant's block, will follow suit but, in the meantime, the Respondent remains the freeholder, responsible for managing the property and the estate by delivering services in accordance with each of the leases.

2. The Applicant has sought a determination under section 27A of the Landlord and Tenant Act 1987 that certain service charges are not reasonable or payable for the four years from 2019 to 2023 – the first three years are actual charges while the fourth involves estimated charges.

3. The Tribunal heard the case on 12th May 2023. The attendees were:

- The Applicant;
- Mr Andrew Pye, representing the Respondent; and
- Ms Beverley Frimpomaah, a leasehold litigation officer.

4. The documents before the Tribunal consisted of:

- A bundle in electronic form, prepared by the Applicant, of 495 pages (unfortunately, due to the Applicant's inexperience with the preparation of such bundles, the contents index was impossible to use and the documents were not set out in a useful order but the Respondent, despite their greater experience, did nothing to try to improve the bundle – hopefully both parties will learn from this if they are ever involved in tribunal proceedings again);
- A bundle of additional documents from the Respondent, of 186 pages; and
- Handed up during the hearing, a copy of the service charge account for 2017-18.

5. The Applicant had also provided a large number of videos compiled from the four cameras she has overlooking the front and rear of the building from her flat and the landing area immediately outside her flat entrance door. The Tribunal was only able to look at some of them, including ones to which the Applicant specifically drew attention during the hearing.

Repairs & Maintenance

6. The Applicant's principal complaint against the Respondent is that the repairs and maintenance service has been inadequate to such an extent that the Respondent is in severe breach of covenant. In particular,

(a) Both the Applicant's flat and some of the common areas have been subject to severe water penetration over significant periods of time. Although the Respondent has carried out roof repairs which it thought at the time were sufficient to remedy the issues, they have admitted both delays and the continuation of the problem. The Applicant

understandably objects to paying for a service which appears to be defective.

(b) The windows to the block are in a poor state. Photos show rot and condensation damage.

(c) The Respondent had intended to address the poor windows and possibly the roof in a major works programme but that was suspended for the enfranchisement process. The Respondent now intends to proceed with a programme for the remaining two blocks in the next financial year. However, the Applicant says that it was the proposed major works which provided the principal motivation for the lessees to purchase the freehold. She anticipates that there will be an equally strong reaction against any future major works programme.

7. Unfortunately, as the Tribunal explained to the Applicant during the hearing, these matters are outside the Tribunal's jurisdiction. In relation to the water penetration and the windows, the Applicant would appear to have a good case that the Respondent has breached the repairing covenants in her lease. However, her remedies for that lie in the county court. Her objection is that no work has been carried out to address the disrepair but the corollary of that is that she has not been charged for such work and, therefore, there are no service charges the reasonableness or payability of which the Tribunal may rule on.

8. The Applicant had picked out Planned Preventative Maintenance as a service charge category to which she objected on the basis that the Respondent wasn't delivering a proper maintenance service. However, the Tribunal pointed out that, for the year 2019-20, the charge in this category was for the testing and maintenance of firefighting equipment, emergency lighting and cold water tanks. The Applicant confirmed that she had no challenge to these particular works.

9. Similarly, for the same year, the repairs and maintenance charge consisted of expenses for work to the communal TV aerial, electrical repairs, signage and drainage. Again, the Applicant confirmed that she had no challenge to these particular works.

10. It is to be hoped that both parties take a sensible course and seek to resolve the disrepair problems without litigation, perhaps by using mediation. However, there is nothing further the Tribunal can do on these issues. In the circumstances, the Applicant did not pursue her objections to Planned Prevantative Maintenance, Repairs & Maintenance or Supervision & Management.

Cleaning

11. In contrast, the Applicant challenged the price and quality of the cleaning service charged for by the Respondent and this is clearly within the Tribunal's jurisdiction. She has alleged that the problem is so serious that no-one in the block is paying their cleaning charges. She sought to rely on this fact and the complaints of other lessees but it is notable than none of them thought it worth their time to be a party or a

witness to these proceedings. If a person does not attend the Tribunal, there is no opportunity to test their evidence or to explore the extent to which their complaints are justified. If the Tribunal's findings are not to their liking, they have no-one to blame but themselves for not taking the opportunity given to them to participate in these proceedings.

12. The Respondent used to provide a caretaking service to the estate. This consisted of an employee called Charlie who would provide cleaning, general maintenance and other minor services around the estate. In the year 2017/18 the charges arising from Charlie's work were:

- Caretaking Services: £25,690.02; Applicant's contribution: £685.07
- Contract Supervision: £1,24.82; £33.17.

13. Coincident with Charlie's retirement, the Respondent decided to put out to tender long-term borough-wide contracts for the provision of estate and block cleaning and window cleaning. Two other lots covered other services such as grounds maintenance and concierge and security services. Following a consultation process, Pinnacle were granted a 10-year contract for the cleaning services.

14. As part of their tender, Pinnacle provided prices broken down for each block on the Carlton Hill Estate. In the 2019-20 accounts, the figures were:

- Contract Cleaning: £4,095; Applicant's contribution: £682.51
- Contract Supervision: £601.82; £100.31.

15. The caretaking and cleaning services were not identical but the change resulted in an increase in the relevant charges of £64.58 from £718.24 to £782.82, around 9%. There were further increases in the following years:

- 2020-21: £4,642.20 and £568.56; £773.72 and £94.76
- 2021-22: £5,458.62 and £869.43; £909.79 and £144.91
- 2022-23: £5,595.09 and £705.71; £932.53 and £117.62

16. The Applicant asserted that the service was not worth the price being paid. This was based on two elements, namely the quality and the price. In relation to the quality, the Applicant provided photos showing:

(a) The entrance lobby was not cleaned for 5 consecutive days from 21st to 25th October 2019 (the same paper and cardboard litter was present on each of the 5 days).
(b) The same small collection of leaves was left undisturbed on the mezzanine landing between the ground and first floors between 5th November 2021 and 3rd January 2022. Two other lessees complained about this too.
(c) The outside corner the cleaner used to store buckets, mops and brushes also contained some litter and leaves.
(d) There was some litter immediately outside the bin store.

17. The Respondent accepted that the first two items showed a failure of service. They investigated the first one but could not identify evidence that Pinnacle had failed to attend and clean. In relation to the second one, they contacted Pinnacle about the complaints and arranged them to carry out a comprehensive clean of the block in January 2022. The Applicant followed up with an inspection during which they took photos which showed the area to be clean to a good standard.

18. The Applicant also said she had videos which she had not included in the ones submitted to the Tribunal showing that the cleaner would attend daily but, other than once a week, would simply come in to sign the sheet saying she had attended and then leave without carrying out work. The Applicant works from home and was herself aware when the cleaner would do this.

19. This was contrasted with the job specification provided by the Respondent which listed daily, weekly and annual tasks. The daily tasks were listed as:

- Vacuum and mop entrance area
- Litter pick stairways, balconies and landings
- Sweep and wash refuse chamber store/Chute room including hopper heads
- Litter pick external areas
- Remove bulk refuse

20. The Applicant complained that none of these were done on a daily basis so she was paying for a service which was not delivered.

21. She also complained that the windows were not cleaned regularly enough so that sometimes there were cobwebs. Window cleaning is listed as an annual task but the Applicant asserted that, for the price she was paying, it should be done more often.

22. In relation to price, the Applicant had drawn up her own specification (not yet having seen the Respondent's) and got a company called Adley & Clayton to quote. She said they inspected the building, after which they emailed her to say they could do the cleaning of Foss House for £3,000, inclusive of cleaning chemicals.

23. The Tribunal does not accept that Adley & Clayton have provided a like-for-like quote. It does not cover any estate tasks, is based on a specification containing fewer tasks and fewer or less frequent visits.

24. Pinnacle won the tender for the contract after a comprehensive process which included advertising in the European Journal. There is no evidence that their price is anything other than competitive in the market.

25. The fact is that the price of the cleaning is not high. The Applicant complained particularly about an increase in price between 2020-21

and 2021-22 but the Respondent explained that as resulting from a shift to paying the workers the London Living Wage. However, even in the most recent actual charges, the cost to the Applicant was £909.79 plus the Respondent's supervision.

26. Understandably, the Applicant asserted that there should be no failures in service as referred to in paragraph 16(a) and (b) above. However, the Respondent responded to the latter incident by arranging for a full clean at no additional cost and improved supervision by introducing sign-in sheets and increasing inspections to weekly. They were also able to produce regular annual inspection reports from 2020 onwards containing photos and details of areas which they inspected which showed cleanliness to a high standard.

27. In the circumstances, the Tribunal is satisfied that the cleaning charges are reasonable for the service delivered so that they are payable by the Applicant.

Costs

28. The Applicant sought orders under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent should not be permitted to add any costs of the Tribunal proceedings to the service charges or bill them direct to the Applicant. In fact, Mr Pye stated to the Tribunal that the Respondent would not seek to recover any of their costs of the proceedings from the Applicant, on the basis of which undertaking, the Tribunal did not consider whether to make such orders.

Name: Judge Nicol **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

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 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.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.