



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

Case reference : **LON/00AY/LSC/2022/0266**

Property : **Flat 2, 112B Brixton Hill, London, SW2
1AH**

Applicant : **Southwestern General Property Co
Limited**

Representative : **Mr Haseldine, Counsel**

Respondent : **James Grieve**

Representative : **In person**

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

Tribunal members : **Judge D Brandler
Mr S Mason FRICS**

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

Date of hearing : **22nd May 2023**

Date of decision : **22nd May 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £26,326.45 is payable by the Respondent in respect of the service charges for the years 2016-2022
- (2) The tribunal makes the determinations as set out under the various headings in this Decision

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 payability by the respondent of the outstanding service charges for service charge years 2016-2022.
2. The amount sought in the application for unpaid service charges for that period was £27,063.27.
3. Directions were issued by the Tribunal on 08/09/2022 [20]. Those directions were not received by the Applicant, and amended directions were issued on 22/12/2022 [27].

The hearing

4. The Applicant was represented by Mr Haseldine of counsel, who was accompanied by the freehold owners Mr Ross (senior) and Mr Ross (junior), as well as Ms Theresa Hustay from the managing agents. The Respondent appeared in person and was accompanied by his key worker Mr Rahman.
5. James Grieve (“the Respondent”) arrived at the hearing at 10.30 with his keyworker. He was asked why he had played no part in proceedings to date. His responses were:
 - (i) He had been ill in hospital for 5 months, although he confirmed that he had been discharged from hospital in July 2022;
 - (ii) He reported that he had not had a response to any of his letters to the Applicant requesting a breakdown of service charges, although he provided no evidence of correspondence;
 - (iii) He reported that he does not deal with correspondence as he does not like dealing with legal documentation;
 - (iv) He said he had not read the bundle of documents served at his property by a process server

(v) He was given the opportunity to ask questions of the Applicant during the course of the hearing, but he declined to do so.

6. At the start of the hearing, the Applicant conceded amounts claimed under the heading “estate charges”, there being nothing to justify such charges under the terms of the lease. That concession reduces the total amount claimed in unpaid service charges to £26,326.45.

The background

7. The property which is the subject of this application is a flat on the second floor of 112b Brixton Hill (“112b”) which contains a shop on the ground floor and three self-contained flats on each floor above that shop.
8. Service charges demanded from the Respondent from 2016 until 2022 remain outstanding and are the subject of this application.
9. 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.
10. The Respondent 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 will be referred to below, where appropriate.

The issues

11. The only issue for the Tribunal to determine is whether the service charges demanded are payable, the applicant not having challenged the charges.
12. Having heard evidence and submissions from the applicant and the respondent having declined to ask any questions, the tribunal has made determinations on the various issues as follows.

Service charge demands 2016-2022

13. The applicant has provided valid demands for the above periods, the accounts itemising service charges, and a schedule of service charge arrears.
14. Further to the concession of any charges which relate to “estate” charges, the outstanding service charges in the sum of £26,326.45 are due and owing by the respondent.

15. The respondent has not challenged any of the amounts demanded. His only challenge in the scott schedule [35] is that he had not been provided with a breakdown of the service charges. He also told the Tribunal at the hearing that he had written many letters to the applicant asking for clarification of the service charges. No documentary evidence was provided by him.
16. Ms Hustay confirmed in oral evidence that they had not received any correspondence from the respondent asking for this information.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of service charges demanded from 2016-2022 is £26,326.45.

Reasons for the tribunal's decision

18. The only issue for the Tribunal to determine is whether the sum is payable under the terms of the lease, the respondent having failed to raise any valid challenge to these charges, the terms of the lease provide for this as follows.
19. By clause 3(c) of the terms of the lease dated 22/03/1991 between Delcrag Limited and James Grieve for a term of 99 years from 29/09/1988

“THE LESSEE HEREBY FURTHER COVENANTS with the Lessors....

(c) To pay the Lessors on the Twenty-Fifth day of December in every year or within Twenty-Eight days thereof Twenty-Five percent (25%) of the sum which the Lessors shall estimate that they require to expend in the next ensuing year in complying with the covenants on their part contained in Clause 5(b)(d)(f) and Clause 6 of these presents and likewise Thirty-Three and One Third per cent (33 1/3rd%) of the sum aforesaid of complying with covenant 5(c) in respect of each flat comprised in the Building and such part if not so paid shall be forthwith recoverable by action and shall carry interest at the rate equal to Four per centum (4%)PROVIDED THAT if the sum spent in such next ensuing year (as certified by the Lessors' Auditors or Surveyors shall exceed the sum so estimated as aforesaid the Lessee shall pay such proportionate part calculated as aforesaid of the excess within Twenty-Eight days of the demand therefor by the Lessors but if the certified sum shall be less than the estimated sum such proportionate part calculated as aforesaid of the difference between the two sums shall be allowed as a deduction from the next following payment due from the Lessee pursuant to this Clause” [174-175]

20. No valid challenge has been made by the respondent.

Application under s.20C and refund of fees

21. No applications were made.

Name: Judge Brandler

Date: 22nd 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.

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).