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

Tribunal Case Reference	:	**LON/00AY/LSC/2022/0247**
Property	:	**Flat 87 Keybridge House, 1 Exchange Gardens, London SW8 1BG**
Applicant	:	**Dr Magda Abou El-Eneen**
Representative	:	**Mr AM El Wahsh**
Respondents	:	**(1) Keybridge House LLP** **(2) A2 Dominion Housing Ltd**
Representative	:	**Scott Cohen Solicitors Limited**
Type of Application	:	**Payability of service charges**
Tribunal	:	**Judge Nicol** **Mr SF Mason BSc FRICS**
Date and venue of Hearing	:	**15th March 2023** **By remote video**
Date of Decision	:	**15th March 2023**
Date of Amendment	:	**8th June 2023**

DECISION

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(1) The application is dismissed and the service charges challenged in these proceedings are payable.

(2) The Tribunal makes no order as to costs.

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

Reasons

1. The Applicant is the lessee at the subject property, a flat in a large development completed in 2018. The First Respondent was the developer and, in July 2021, they sold the freehold to the Second Respondent. Y&Y Property Management have been the agents for both Respondents throughout.

2. The Applicants applied on 6th February 2022 for a determination as to the reasonableness and payability of the following service and administration charges:

   (a) £4,590.40 for 2020, paid on purchase of the property; and
   (b) £7,310.38 for 2021.

3. The Tribunal heard the case by remote video on 15th March 2023. The attendees were:

   - The Applicant, sharing a screen with her son and representative, Mr AM El-Wahsh
   - Ms Miriam Seitler, counsel for the Respondent
   - Mr Adam Azoulay from Y&Y

4. The documents before the Tribunal consisted of a bundle of 209 pages and a Skeleton Argument from Ms Seitler.

5. The Applicant's problem was that, when she received the Statements of Anticipated Service Charge Expenditure setting out the amounts which Y&Y estimated would be spent for the years 2020 and 2021, she didn't understand them. She enlisted the help of her son, Mr El-Wahsh, but he didn't understand them either. He corresponded by email with Mr Azoulay at Y&Y but professed to be no closer to an understanding then either.

6. The appropriate course of action would have been for the Applicant to take specialist advice from a solicitor or property agent. Instead, Mr El-Wahsh was certain that his mother was entitled to see maintenance reports which would explain actual expenditure. He didn't get such documents because the accounts have yet to be finalised and so the actual expenditure has yet to be determined.

7. As Mr Azoulay had explained in his witness statement, there have been a number of complications causing delays to the final accounts showing actual, rather than estimated expenditure, including the need to reach agreement with the First Respondent and taking account of void properties as they were gradually sold during the service charge year. He is making progress and anticipates being able to provide accounts soon but cannot make any guarantee.

8. The Tribunal took the opportunity to ask Mr Azoulay to explain where the estimated service charge figures had come from. He said that some, such as pump maintenance and landscape gardening, were based on

quotes obtained from potential contractors through a tendering process, with an amount added for contingencies. Others, such as general maintenance, were based on figures for other developments managed by Y&Y which they felt were analogous in terms of height and number of residential units.

9. Unfortunately, due to her lack of understanding, the Applicant had failed to identify what particular matters she was actually challenging. The Court of Appeal, in *Yorkbrook Investments Ltd v Batten* (1985) 18 HLR 25, stated,

> Having examined [the relevant] statutory provisions, we can find no reason for suggesting that there is a presumption for or against a finding of reasonableness of standard or of costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence - of his case. … If the tenant gives evidence establishing a prima facie case, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions.

10. The Tribunal's role is not to carry out some sort of desktop audit of service charges but to consider the issues raised by the lessee. The lessee has to specify the items of service charges they object to and why. The Applicant has failed to do so in this case. There is simply no case for the Respondents to answer. While it is natural and unobjectionable for the Applicant to have questions, it is not appropriate to use the Tribunal's procedure simply to gain answers or a better understanding.

11. In the circumstances, the Tribunal has no choice but to dismiss the Applicant's application, meaning that the charges under challenge are payable. When the accounts showing the actual charges are provided, and if the Applicant can (with specialist assistance) identify matters which are not reasonable or payable, she is entitled to bring a fresh claim.

12. In her application form, the Applicant ticked the relevant boxes saying that she did not want an order under section 20C of the Landlord and Tenant Act 1985 prohibiting the Respondent from putting their costs of these proceedings or the service charge but that she did want an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent should not be permitted to bill her directly for those costs. In fact, neither the Applicant nor her son really understood the grounds for or the effect of such orders. In any event, the Tribunal could not identify any grounds for granting either kind of order.

Reasons for amendment

13. In an application dated 20th April 2023 for permission to appeal, the Respondent pointed out that the finding in paragraph 11 that the service charges were payable is not reflected in the summary of the decision. For the avoidance of doubt, the decision is amended to clarify the issue pursuant to the Tribunal's power under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Name: Judge Nicol **Date:** 15th March 2023 (amended 8th June 2023)

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 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 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).

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.