



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

Case reference : **LON/00AW/LSC/2022/0063**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE (hearing of
In Person (hearing of**

Property : **Garden Flat, 3 Bonchurch Road,
London, W10 5SD**

Applicant : **Ms Eva Molero**

Representative : **In person**

Respondent : **Mountview Estates PLC**

Representative : **Ms Noreen Butler assistant accountant
with the respondent**

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 H Carr
Mr R Waterhouse FRICS**

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

Date of decision : **31st July 2023**

DECISION

Covid-19 pandemic: description of hearing

The first hearing was a remote video hearing which had not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The second hearing was a face to face hearing which was held because of the difficulties the applicant faced in connecting with the video hearing. The documents that I was referred to are in a bundle of 375 pages, the contents of which I have noted. The order made is described below.

Decisions of the tribunal

- (1) The tribunal determines that the sum of £2,954.44 is payable by the Applicant in respect of the disputed service charges for the year 2019.
- (2) The tribunal determined not to set aside the agreement therefore the monies agreed as payable under that agreement continue to be payable.
- (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.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)] as to the amount of service charges and (where applicable) administration charges] payable by the Applicant in respect of the service charge years

The hearing

2. On the 14th December 2022 the Applicant appeared in person at the hearing and the Respondent was represented by Ms Noreen Butler assistant accountant with the Respondent. Also in attendance were Mr Barry Paris who is a senior property manager with the respondent and Ms Elena Goltyakova an assistant accountant with the respondent.
3. The hearing was delayed because the Applicant was unable to connect to the remote hearing room until 11.15. As a consequence, not all of the issues could be heard on 14th December 2022. Therefore the hearing was adjourned and reconvened on 17th July 2023. It was reconvened as a face to face hearing due to the Applicant’s difficulties in connecting to the hearing and the complexity of the issues she wished to raise.

4. At that hearing, Ms Butler, Mr Paris and Ms Goltyakova were present for the respondent and Ms Molero, the applicant, appeared and represented herself. She was accompanied by a friend. Mr Paris left the hearing at lunch time on the second day.

The background

5. The property which is the subject of this application is a basement flat in an early 20th century mid terraced house which has been converted into three flats.
6. 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.
7. 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.
8. The Applicant's apportionment of the service charges is 25%.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges totalling £7415.98 for the year 2019 relating in particular to
 - a. Service charges for maintenance totalling £1483.03
 - b. Insurance charges totalling £1951.41
 - c. Outstanding charges for major works totalling £3981.54
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The payability of outstanding charges for major works

11. The applicant argued that the outstanding charges for major works were not payable because the agreement dated 5th December 2018 that she had reached with the respondent in settlement of tribunal proceedings was not valid.

12. The applicant made the following arguments in connection with the agreement:

- Her capacity to enter into the agreement
- The impossibility of the agreement
- Whether she was subject to undue influence/coercion
- Her lack of benefit from the agreement.

13. In connection with capacity the applicant said that she was very stressed and very ill at the time of the hearing.

14. In connection with undue influence she said that she did not understand the agreement that she had entered into and felt coerced into so doing.

15. The agreement was impossible for her to perform. She had to pay £491 pcm when she has a very limited income.

16. The respondent pointed out that the applicant entered into the agreement in the context of a tribunal hearing at which the applicant was represented by a barrister.

17. The applicant said that the barrister was underprepared and acting pro-bono.

The tribunal's decision

18. The tribunal determines that the agreement will not be set aside.

Reasons for the tribunal's decision

19. The starting point for decisions about capacity is the assumption that a person has capacity. The applicant has provided no evidence that she lacked capacity at the time of the agreement. The tribunal notes that she was represented when she made the agreement. The fact that it may have been unwise for her to enter into the decision is not an indication that she lacks capacity.

20. Moreover the application to set aside the agreement is made more than four years after the agreement was entered into. In these circumstances it is not within the power of the tribunal to set aside the decision.

Insurance

21. The applicant says that £1,951.41 demanded by the landlord in connection with insurance is not payable
22. She says that her insurance is paid until March 2023 and her standing order is currently paying towards September 2023.
23. The applicant explained that there are three separate accounts for outgoings on the property, the insurance account, the ground rent account and an account for the maintenance charges.
24. Each account has a different account number and money is paid into specific accounts. The applicant says that she paid monies into the ground rent accounts and the insurance account and on her calculations no money is owing on insurance.
25. The respondent says that they received instructions from the applicant which they followed to the letter. They produced accounts showing where the monies were paid into and a running account of arrears.

The tribunal's decision

26. The tribunal determines that £1951.41 arrears in insurance is reasonable and payable.

Reasons for the tribunal's decision

27. The tribunal accepts the evidence of the respondent that the monies were paid into the accounts as per the instructions of the applicant.
28. The applicant has produced no evidence that the insurance charges were unreasonable or not payable.

Maintenance charges £1483.03

29. The applicant challenged a number of invoices in relation to these charges.
30. In particular she argues that the sum of £578.88 was credited to her maintenance account on the 6/12/2016, which ended the year with a balance of £431.47. This payment does not show on the Respondent's current records.
31. The respondent says that this is because she was further credited.
32. The applicant says that four sets of management fees were charged, in years at £25 each year for management of maintenance. These fees are

only payable if there are maintenance charges levied and as there was no maintenance in those years they are not payable.

33. The respondent agreed and by the time of the second hearing the monies had been credited to the applicants account.
34. The applicant said that some of the charges were demanded too late.
35. The applicant argues that the maintenance costs have been unreasonably incurred because the roof repair problem was not solved but has required numerous instances of works.
36. The applicant argues that the costs are too high; there is no evidence of market testing and no evidence for estimate comparison.
37. The applicant says that charges do not fall within the scope of the lease.
38. The respondent agreed that patch repairs were done on the roof of the property but that this was done to see if major costs could be avoided.
39. The respondent says that the applicant has a long history of failing to pay her annual liabilities and querying, long after the event, the validity of charges and allocation of payments. Explanations have already been provided for the challenges that are now made and several credits have already been given. The applicant constantly strives to dispute the charges and does not accept that disputing a charge does not, by itself, negate her liability

The tribunal's decision

40. The tribunal determines that the amount payable in respect of the disputed maintenance charges should be reduced by £480. Therefore £1003.03 is payable.

Reasons for the tribunal's decision

41. The tribunal agrees with the respondent that the credit of £431.47 has already been applied and that the applicant is not entitled to a further credit.
42. The tribunal agrees with the respondent that certificates are not required in order the amounts to be payable.
43. The tribunal accepts the evidence of the respondent that there has been no breach of the requirements of s.20B of the Act.

44. The tribunal considers that all of the works charged for are covered by the provisions of the lease.
45. In respect of the specific challenges to maintenance charge demands the tribunal has reached the following determinations (based upon the applicant's Scott Schedule)

Item	Cost £	Tenant's comments	Landlord's comments	Tribunal decision
Maintenance charges (repairs)		These charges are challenged because the cost of repairs are unreasonably incurred/costs of services are unreasonable	These concerns were addressed with Ms Molero at a meeting with Mrs Elena Goltyakova and Ms Noreen Butler of Mountview Estates PLC. The result of the queried items was emailed to Ms Molero on 28.01.20 along with all supporting documentation.	The tribunal sets out its determination item by item
19/10/2010 SW Limited – clearance of blocked drains	193.88 (25%) 48.47	Works were not carried out.	We have no reason or evidence to dispute or doubt the fact the repair was carried out	The tribunal accepts the evidence of the respondent that the works were carried out. The applicant has simply asserted that they were not carried out. The constant blockage of the drains was explained in evidence and it is therefore more likely than not that these works

				were carried out.
03/02/2017 Peter Cox – abortive visit	108.00 (25%) 27.00	Amount disputed: *the tenant did not instruct the company. *The inspection was free as was under guaranty. *The surveyor arrived too late; there wasn't enough time to carry out the survey.	This visit was arranged with Ms Molero who did not keep the appointment hence the call out fee and therefore the other assertions are immaterial	The tribunal accepts the evidence of the respondent and therefore the charge is payable.
19/03/2015 WS Maintenance Ltd. (ROOF)	438.00 (25%) 109.50	Repair ineffective and conducted to poor a standard.	It is difficult to imagine how Ms Molero could possibly know this unless she trespassed upon the roof which can only be accessed through the top floor flat. No photographic evidence has ever been shown to support this accusation.	The applicant has made an assertion without evidence in support. The tribunal therefore determines that the charge is reasonable and payable.
19/03/2015 WS Maintenance Ltd. (ROOF)	690.00 (25%) 172.50	Poor standard of roof work; ineffective repairs	Once again, there is no evidence to support this nor can we understand how this can be ascertained by Ms Molero.	The applicant has made an assertion without evidence in support. The tribunal therefore determines that the charge is reasonable and payable.
01/05/2018 WS	294.00 (25%) 73.50	More patching work. All roof	If there is a leak from a roof it	The respondent accepts that the

Maintenance Ltd. (ROOF)		repairs were of an unreasonable standard as they proven ineffective, and provided no long-term solution and unreasonably incurred cost	must be dealt with on an ad hoc basis, you cannot allow the leak to continue. A long-term solution was put in place during the major works scheme and there have not been any subsequent leaks since	repairs were patch repairs but that these were done pending works done as part of the major works project. The tribunal considers that it was reasonable to carry out these repairs pending a major works project and accepts that the charges are reasonable and payable.
28/02/2018 AKS-Ward Inspect water ingress	1,380 (25%) 345	incorrectly demanded Unreasonable charge. This was another tenant's invoice.	Ms Molero complained of damp therefore we arranged an inspection which required two visits and a contactor to attend site to make good, therefore we cannot understand why this cost is disputed.	At the hearing the respondent explained that the contractor had put the invoice into the name of the tenant whose flat he had inspected as it was there that the water was entering the property before it emerged in Ms Molero's flat. The tribunal accepts this explanation and the evidence of the respondent and therefore determines that the charge is reasonable and payable.

AKS-Ward Party-wall maters	1,620 (25%) 405	Incorrectly demanded No information about what this service referred to. No consultation under Section 20. No estimate comparison seen. No certificate was served.	A party wall was required as we needed to repair parapet walls as part of the major works. There is no need to consult for this under Section 20.	The tribunal accepts the evidence of the respondent that this work was required and agrees that it falls outside of the statutory consultation requirements. The tribunal determines that this sum is reasonable and payable.
AKS-Ward Site visit to serve report	480	Incorrectly demanded. Only (25%) can be charged on any item. Invoice was issued too late (2021) No certificate was served. Unreasonable amount. Unreasonable and unnecessary charge. The post office could have been used	Charged at 25% Professional fees are outside the Section 20 consultation process The surveyor engaged to carry out the damp report had to personally attend to clarify the position to Ms Molero as she would not accept the findings when explained by Mountview staff	The tribunal does not accept the evidence from the respondent that this was a reasonable charge. It does not consider that there was any need for the surveyor to personally attend to clarify the position to Ms Molero. It therefore determines that this charge is not reasonable and deducts it from the total sum demanded for maintenance.
30/11/2018 AKS-Ward professional service in legal case	3,525 (25%) 881.25	The Lease does not appear to mention such legal charges. Unreasonably incurred costs. Costs were	The Fifth Schedule-clause 22 refers to this obligation. Refer B3-5 Ms Molero disputed the	The tribunal considers that if the lease provides for charges of this nature to be paid by the lessees then

		<p>unnecessary as tenant did not challenge the works or the costs. The cost was unnecessary therefore unreasonably incurred. The payment plan offered to the tenant could have been offered originally and avoid legal costs. No certificate was served.</p>	<p>contract value and schedule of works so a determination by the FTT was deemed necessary. This charge relates to the construction Consultants attendance at the FTT hearing</p>	<p>the charge is payable. The tribunal considered the 5th schedule paragraph 22 but did not consider that this charge was payable under that paragraph which referred to charges for consents. The applicant pointed out paragraph 16 of Schedule 8 but also noted that this referred only to charges in connection with forfeiture. The tribunal agreed with the applicant that the charges were not payable under that paragraph. The tribunal however considered that the charges were payable under Schedule 8 paragraph 11 and therefore determines that the charges are payable and reasonable.</p>
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Application under s.20C and refund of fees

46. In her application, the Applicant made an application for a refund of the fees that she had paid in respect of the application/ hearing¹. Having

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

47. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines not to make an order under section 20C of the 1985 Act.

Name: Judge Helen Carr

Date: 31st July 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).