



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

Case reference : **LON/00AY/LSC/2023/0218**

Property : **Flat A 384 Coldharbour Lane, London
SW9 8LF**

Applicant : **Glen David Edwards**

Representative : **Mr Bruce Maunder Taylor**

Respondent : **MP4T Properties Limited**

Representative : **Prime Property Management Limited**

Type of application : **Reasonableness and payability pf
service and administration charges**

**Tribunal
member(s)** : **Judge Tagliavini
Mrs E Flint FRICS**

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

Date of decision : **3 October 2023**

DECISION

The tribunal's summary decisions:

- (1.) The tribunal makes the decisions that are set out below.
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The application

1. The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable.
2. The lessee also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The background

3. The applicant is the long leaseholder of the subject premises at Flat A 384 Coldharbour Lane London SW9 8LF ('the premises') under a lease dated 4 May 1990 which was regranted by a new lease dated 21 November 2006 granting a term of 173 years with effect from 25 December 1989. The subject premises comprise a flat on the first and second floors over ground floor/basement commercial premises. In addition, the applicant has the use of a patio garden located on the flat roof of the ground floor extension which does not form part of his demise.

The issues

4. The tribunal has identified that the issues to be determined include:
 - (i) Roof garden charge 25 Dec – 24 June 2023 £7500
 - (ii) Insurance premium 25 December 2022 – 24 December 2023 £1050
 - (iii) Building charge 25 December 2022 – 24 December 2023 £1583.75
 - (iv) Whether the landlord has complied with the consultation requirement under section 20 of the 1985 Act

- (v) Whether the cost of works are payable by the leaseholder in advance under the lease
- (vi) Whether penalty fees are payable under the terms of the lease
- (vii) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made
- (viii) Whether an order for reimbursement of application/ hearing fees should be made

The Hearing

5. As neither party requested an oral hearing, the application was determined on the documents provided by the applicant in the form of a hearing bundle comprising 162 pages. The respondent played no part in these proceedings, despite directions having been given and the tribunal satisfied letters to the respondent had been sent to the correct correspondence address. The applicant provided a signed witness statement dated 8 August 2023 to which a Statement of Truth was attached together with a Statement of Case prepared by Mr B R Maunder Taylor FICS MAE.

The tribunal's decisions

6. (i) Roof garden charge 25 Dec – 24 June 2023 £7500

The tribunal determines this sum is limited to £250.

7. (ii) Insurance premium 25 December 2022 – 24 December 2023 - £1050

The tribunal determines the applicant is liable to pay 40% of the Building Insurance only. Further, where the Buildings Insurance demands a contribution of loss of rental income from the applicant this is also to be removed from the demand as it is not payable by the applicant.

8. (iii) Building charge 25 December 2022 – 24 December 2023 £1583.75

The tribunal finds these charges include payment of accountancy/audit fees; managing agent fees; bank fees; postage and stationary; reserve fund none of which are provided for in the lease and are therefore not reasonable or payable by the applicant.

9. Whether the landlord has complied with the consultation requirement under section 20 of the 1985 Act

The tribunal determines the respondent failed to carry out any consultation with the applicant that is required under section 20 of the Landlord and Tenant Act 1985 in respect of the flat roof/grass roof works. Further, the respondent has failed to identify the nature and extent of the works carried out for which it now seeks to charge the applicant and therefore, the cost of these works cannot be regarded as reasonable.

10. (v) Whether the cost of works are payable by the leaseholder in advance under the lease

The tribunal determines the costs of the works are not payable by the applicant in advance under the terms of the lease.

11. (vi) Whether penalty fees are payable under the terms of the lease

The tribunal determines no penalty fees are chargeable under the terms of the lease other than a charge for interest; *clause 1(d)*.

12. (vii) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made

The tribunal determines it is reasonable and appropriate to make an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the costs of this litigation before the tribunal can be passed on to the applicant through the service charges. This order is made notwithstanding the tribunal's findings the lease makes no provision for the recovery of legal costs or administration charges except if relation to section 146 Law of Property Act 1925 (forfeiture of lease) proceedings; *clause 1 (t)*.

13. (viii) whether an order for reimbursement of application/ hearing fees should be made

The tribunal determines the applicant's application and hearing fee are to be reimbursed by the respondent.

Reasons for the tribunal's decisions

14. The tribunal finds the applicant's lease makes no proper provision for the charging and collection of service charges. Under the terms of the (new) lease the respondent is liable to obtain buildings insurance to which the applicant is required to contribute 40%. The lease makes no provision for a contribution towards the loss of rental income from the commercial unit and therefore, the respondent's demand for this part of the insurance is not payable by the applicant.

15. The tribunal finds the lease makes provision for the payment of rent in advance by way of equal half yearly payments on 25th December and

24th June of every year as set out in the Introduction of the lease. This makes provision for the payment of ground rent and reserves as rent other payments the applicant is required to make under the lease.

16. The tribunal finds the respondent lessor is liable to carry out works of repair and maintenance to the roof garden to which the applicant is required to contribute 75%; *clause 3 and para. 4 of Schedule 2*. However, the sums demanded by the respondent in respect of the flat roof/roof garden work are service charges within the meaning of section 18 of the Landlord and Tenant Act 1985 and are subject to consultation pursuant to section 20 of the 1985 Act as they exceed £250 per lessee.
17. The tribunal finds the respondent failed to carry out any consultation as required and therefore the sum incurred in respect of flat roof/roof garden works is limited to £250 which is payable by the applicant.
18. The tribunal finds the lease makes no provision for the collection of service charges in respect of a reserve fund, accountancy/audit fees, managing agent fees, administration charges, legal costs (other than those incurred in respect of the forfeiture of the lease), bank fees, postal costs. Therefore these items that have been included in the demands for payment are unreasonable and are not payable by the applicant.
19. Although the lease makes no provision for the collection of legal and administration charges, the tribunal finds it prudent to make an order under section 20 of the Landlord and Tenant Act 1985 and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, as the respondent has failed to participate in these proceedings and appears not to have read or understood the terms of the applicant's lease.
20. In light of the tribunal's findings above, the tribunal determines it is reasonable and appropriate to require the respondent to reimburse the applicant the cost of the application and hearing fee.

Name: Judge Tagliavini

Date: 3 October 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).