



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

**Case reference** : **LON/00AG/LSC/2023/0137**

**Property** : **Various Flats, Chichester Court,  
Royal College Street, London NW1  
9LZ**

**Applicants** : **Various tenants set out in the Annex**

**Representative** : **Bryony Freemantle, lead leaseholder**

**Respondent** : **Riverside Group Ltd**

**Representative** : **Stephen Evans of counsel, instructed  
by Devonshires**

**Type of application** : **Application for a determination of  
the reasonableness and payability of  
service charge under S.27A Landlord  
and Tenant Act 1985**

**Tribunal** : **Judge Adrian Jack, Tribunal Member  
Sarah Phillips MRICS**

**Date of Decision** : **5<sup>th</sup> October 2023**

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**DECISION**

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## **Background and procedural**

1. The property comprises the premises of a former school. It is now let as flats for social housing on assured tenancies.
2. The Tribunal heard the matter on 29<sup>th</sup> September 2023. Ms Freemantle, one of the tenants, appeared for the applicants. Mr Evans of counsel appeared for the landlord, a large provider of social housing. There was initially some confusion as to whether it was solely Ms Freemantle who was the applicant, or whether all the tenants listed in the Annex hereto were applicants. It was agreed that, insofar as it was necessary, all the tenants listed in the Annex would be added as applicants.
3. The applicants apply for determination of the payability of service charges in the service charge years 2020-21, 2021-22, 2022-23 and the current service charge year 2023-24, which commenced on Monday 3<sup>rd</sup> April 2023.
4. The applicants have also issued an application under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recharging the costs of the current proceedings to them.

## **The tenancy agreements**

5. The tenants all hold under assured tenancy agreements. The agreement of Ms Freemantle has been taken as typical. Her agreement is dated 18<sup>th</sup> June 2009. The weekly payments under the agreement comprised at that time the net rent of £113.72 and a service charge of £7.61, a total of £121.33. There was provision to vary the rent, which was due in advance on the Monday of each week.
6. Clause 1(3) of the agreement provided:
  - “(3a) The Association shall provide the services listed in the attached schedule in connection with the Premises for which the Tenant shall pay a Service Charge.
  - (3b) The Association may, after consulting the Tenants affected, increase, add to, remove, reduce or vary the services provided.
  - (3c) The Association may charge for services on the basis either of reasonable costs incurred during the previous accounting period or of estimates for the current or next accounting period.
  - (3d) The cost of services shall be apportioned equally between all the properties concerned.”
7. There is no provision for the landlord to make adjustments after the end of the service charge year. In other words, under the agreement, if the landlord charges for services on an estimated basis, the landlord

cannot demand more if the estimate is too little and the tenant cannot demand repayment (or credit) if the estimate is too much.

8. Another oddity of the agreement is that there appears to be no discretion to vary the proportion of the service charge to be paid by individual tenants. Thus someone renting a one-bedroom flat pays the same as someone renting a four-bedroom flat. Further, it is unclear what the consequence of the landlord varying the services provided (as is permissible under clause 1(3b)), if the landlord fails to carry out a consultation as provided in that sub-clause. It is at least arguable that a failure to consult renders any change in the services provided a legal nullity. (If a change were a nullity, so that the landlord provided additional services without being able to charge for them under the tenancy agreement, the landlord might have a claim in restitutionary law, but that would not be a matter within the jurisdiction of this Tribunal. The landlord would have to bring proceedings in the County Court.)

### **The issues**

9. The Tribunal gave directions on 26<sup>th</sup> April 2023 as to the preparation of a Scott Schedule, setting out each party's case on the individual items of service charge. Many of the issues were resolved in advance of the hearing before us. Before us, the issues outstanding were the charge for the supply of gas in all years; the internal and external cleaning for 2020-21, 2021-22 and 2023-24 (there was no issue on this as to 2022-23); and the communal electricity for 2021-22, 2022-23 and 2023-24.
10. After discussions of the issues before us, of these issues the parties were able to reach agreement on the gas charges, the internal cleaning for 2020-21, the internal and external cleaning for 2021-22 and the communal electricity for 2021-22. This left only the external cleaning for 2020-21, the internal and external cleaning for 2023-24, and the communal electricity for 2022-23 and 2023-24 for us to determine.
11. As to the outstanding issues of cleaning in 2020-21 and 2023-24, the tenants assert that the number of hours claimed was excessive. (No issue was raised as to the hourly rate.) Mr Evans took the point that this point had not been raised in the Scott Schedule. The landlord, he said, would have called the caretaker who undertook the cleaning, and adduced contemporary records of the work done, if it had realised this point was being made. In our judgment, Mr Evans is right on this. The whole purpose of a Scott Schedule is to define the issues and this assertion as to the hours worked was not pleaded. We disallow nothing.
12. In 2022-23, the total demanded of the tenants for communal electricity was the estimated amount of £16,898.50. The landlord's case to us was that the actual figure for 2022-23 was £21,492.43 and it would be fair to allow that figure. As we have set out above, it is not in our judgment possible for the landlord to revisit the figure demanded. The landlord

cannot claim the higher amount. The tenants complain that the estimate was too high, because the figure for 2021-22 (which was agreed) was only £5,142.30. They said that the landlord left the communal lighting on too long. In our judgment, however, the fact that the actual cost was £21,492.43 shows that the estimate was if anything on the low side. As to the point on the communal lighting, the cost of keeping low energy bulbs on for longer than necessary is likely to be small and does not cause us to change our view.

13. In our judgment £16,898.50 was a reasonable estimate, which the tenants cannot go behind. Accordingly we allow £16,898.50 for communal electricity in 2022-23.
14. In 2023-24, the amount originally demanded by the landlord was an estimated £21,492.43. Before us the tenants submitted that £5,576.00 was appropriate. The landlord made an open offer to reduce the estimated figure to £15,000.
15. In our judgment the £15,000 is a reasonable estimate, given the figures for 2022-23.

### **Costs**

16. The Tribunal has a discretion as to who should pay the costs payable to the Tribunal. These comprise the issue fee of £200 and the hearing fee of £100. The tenants also seek an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recharging any of its legal costs to the tenants in the service charge.
17. The landlord said that there had been a mediation and that the landlord wanted to bring to the Tribunal's attention certain matters arising from the mediation. In general, what is discussed at a mediation is completely without prejudice and cannot subsequently be relied upon. However, there are exceptions and without knowing what the landlord wants to submit we cannot rule on this point. Accordingly, we give directions below for the determination of the costs issues.

### **DETERMINATION**

- a) Insofar as any of the tenants listed in the Annex hereto are not yet applicants to the section 27A and section 20C applications, they are added as additional applicants.
- b) The Tribunal disallows nothing in respect of the external cleaning for 2020-21 and the internal and external cleaning for 2023-24.
- c) The Tribunal allows £16,898.50 for communal electricity in 2022-23 and £15,000.00 for communal electricity in 2023-24.
- d) The landlord shall by 20<sup>th</sup> October 2023 serve on the Tribunal and on the tenants its submissions as to costs.

- e) The tenant shall by 3<sup>rd</sup> November 2023 serve on the Tribunal and on the landlord its submissions as to costs.
- f) The landlord may by 10<sup>th</sup> November 2023 serve on the Tribunal and on the tenants a reply.
- g) The Tribunal shall thereafter determine any issues outstanding as to costs.

**Name:** Judge Adrian Jack

**Date:** 5<sup>th</sup> October 2023

## ANNEX

The applicant tenants and their flat numbers are:

Halime Lipovica (1)  
M Iovic-Daiwan (2)  
Stacey Bottle-Phillips (4)  
Anna Madden (5)  
Joyce Omoboriowo (7)  
Jessica Tully (8)  
A V V Clark (9)  
Cina Aissa (10)  
Carl Griffith (13)  
R Bireh (14)  
Andrew Gervaise-Johnson (15)  
Bryony Freemantle (16)  
Kirsten Rapp (20)  
Yin Ruby Lam (23)  
Aram Simonyan (24)  
Gary Coleman (25)  
David Lewis (26)  
Vered Gruenberg (29)  
Natalie Chentite (30)  
Sarah Hartnett (31)  
Yasmin Begum (34)  
Zarife Krasnigi (35)  
Nadia Pereira (38)  
Carey Smith (39)  
Emelye Rennards (40)  
V Murphy (41)

## SCHEDULE OF 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 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.