



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

Case reference : **LON/00AC/LSC/2021/0355**

HMCTS code : **Face-to-Face Hearing**

Property : **23-27 Orchard Avenue, London, N3 3NL**

Applicant : **Derek Akowacz (Property and Affairs
Deputy for Iris Patricia Frewin)**

Representative : **In person**

Respondent : **Mahvash Alerassool**

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 Robert Latham
Richard Waterhouse FRICS**

**Date and Venue of
Hearing** : **25 November 2022
at 10 Alfred Place, London WC1E 7LR**

Date of decision : **2 December 2022**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the following service charges are payable (in respect of which the Respondent is liable for 37.5%):

- (a) 2020: £640;
- (b) 2019: £1,240;
- (c) 2018: £667;
- (d) 2017: £1,238.92;
- (e) 2016: £620;
- (f) 2015: £600.

(2) The Applicant made no application for the repayment of the tribunal fees of £300 which he has paid.

The Application

1. By an application dated 10 August 2021, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2015 to 2021 and forward. Mr Derek Akowacz brings the application in his capacity as Property and Affairs Deputy for Iris Patricia Frewin, the freeholder/landlord, pursuant to an appointment made by the Court of Protection on 17 April 2020.
2. On 16 November 2021, the Tribunal gave Directions. Both parties have produced Bundles of Documents. References to the Applicant's Bundle (111 pages) will be prefixed by "A.____" and to the Respondent's Bundle (44 pages) by "R.____". The Applicant has produced a Schedule identifying the service charges in dispute (at A.57-62) to which the Respondent has replied (at R.21-26).

The Hearing

3. Both the Applicant and the Respondent appeared in person and gave evidence. The Respondent has paid the sums which have been demanded in respect of insurance and ground rent. However, a significant issue has been the manner in which the lease should be interpreted in respect of the other service charges which have been demanded. Service charges have not been demanded in accordance with the terms of the lease. We hope that our decision will provide guidance as to how the service charge should be operated for future years. We were told that the other tenants have paid the sums that have been demanded.

The Background

4. The building at 23-27 Orchard Avenue ("the Building") has been converted to create three flats. The Respondent's two bedroom flat, known as 23 Orchard Avenue, is on the ground floor. Nos. 25 and 27 are on the upper floors. To the side of the Building there is a separate maisonette, known as 23A Orchard Avenue, with its own front door and entrance. This is held under a separate freehold title and is irrelevant to the issues which this tribunal is required to determine. The garden to the rear of the building is demised to the lessee of No. 23.
5. The landlord retains possession of the front garden in which there are shrubs and a pathway to the front door. The front door to the building leads into a small hallway off which there is a door to No. 23. There is also a door opening onto a staircase up to Nos. 25 and 27. This door has recently been locked for security reasons. There is lighting to the hallway and staircase which is fed off the electricity supply to No. 25. It is accepted that it would be disproportionate for there to be a separate supply for the common parts. The landlord has rather paid a contribution of £50/£60 per annum to the tenant.
6. The Respondent occupies 23 Orchard Avenue pursuant to a lease dated 29 September 1972. Mrs Alerassool acquired the leasehold interest in 1977. At the time, the landlord was Mr Terence Frewin who occupied Flat 25. There has been a history of the Respondent failing to pay the sums due, and the landlord has sought payment from her mortgagee, the Halifax Building Society.
7. In 2010, Mr Frewin died and the building passed to his niece, Miss Iris Frewin. A year or so later, Mr Anthony Wood who had been the owner of the maisonette at 23A Orchard House, sold this property and acquired the leasehold interest in No. 25. He was a keen gardener. He took a number of his pot plants from the front of No.23A to the front of the building. There were also a number of shrubs that needed to be maintained.
8. Mr Wood assisted Miss Frewin to manage the building. The hallway was lit from his electricity supply. He was a keen gardener and maintained the front garden. He also arranged for the hallway to be cleaned. A sum of £900 was charged to the service charge account for these services.
9. In about 2017, Mr Wood moved to live in Tunis. He has retained No.25 and makes a number of visits to the flat each year. He has not sublet his flat. He has maintained the front garden during his visits. The pots have been connected to an automatic watering system. However, the shrubs have needed to be cut back. Since the Covid lockdown in March 2020, Mr Wood has rarely visited the UK.

10. Because Mr Wood was abroad, Mr Akowacz assisted Mrs Frewin to manage the Building. Mr Akowacz is a procurement director. He had known Miss Frewin for a number of years. In September 2017, Miss Frewin had a fall. Thereafter, she has developed dementia. As her mental capacity failed, the London Borough of Barnet persuaded Mr Akowacz to agree to be appointed as her Deputy. The appointment was made on 17 April 2020.
11. Mrs Alerassool does not currently occupy the flat. In 2000, she bought a house. Since then, she has let out her flat, apart from a period between 2019 and 2021 when she was refurbishing her house. She currently receives a rent of £1,600 per month from her subtenants.

The Lease

12. The Respondent occupies her lease pursuant to a lease dated 29 September 1972. The lease grants her a term of 99 years from 25 December 2071 at a rent of £50 per annum paid quarterly.
13. Clause 1 requires the Lessee to pay 37.5% of the sums expended by the Lessor in keeping the building in repair. The clause also requires the Lessee to contribute 37.5% of the sums expended on:
 - (i) "the maintenance and repair of the common staircase and the lighting and cleaning thereof";
 - (ii) "the fees paid by the Lessor for the management of the building";
 - (iii) "the cost of the decoration and maintenance of all external parts of the said building"
 - (iv) "insuring the building"
14. Clause 1 provides that the said sums are to be paid to the Lessor "on the quarter day next following the date on which the Lessor's auditor shall certify the total sum expended by the Lessor in respect thereof for the preceding year".
15. By Clause 2, the Lessee covenants to repair and decorate the demised flat. By Clause 2(xv) the Lessee covenants to "pay to the Lessor all expenses (including Solicitor's costs and Surveyor's fees) incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court".

16. In her Statement of Case, the Respondent asserts that there are no specific clauses for service charges in her lease. She is clearly wrong on this. However, she raises three points:

(i) Whilst she accepts that the Lessee is obliged to contribute to the cost of cleaning and electricity for the hallway, she denies that she is responsible for the costs in connection with the staircase. She suggests that she is only required to contribute to such part of the overall cost that relates to the hallway.

(ii) The Lessee is not required to contribute to the cost of maintaining the front garden. The lease makes no provision for this.

(iii) The Lessor is not entitled to charge a management fee. The Respondent notes that in the past, the landlord has made no demand for such a payment.

17. In construing the lease, we have regard to the guidance given by the Supreme Court in *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619. The interpretation of a contractual provision, including one as to service charges, involves identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Although, the less clear the relevant words were, the more the court could properly depart from their natural meaning, it should not embark on an exercise of searching for drafting infelicities in order to facilitate a departure from the natural meaning. Commercial common sense is relevant only to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date on which the contract had been made. Moreover, since the purpose of contractual interpretation is to identify what the parties had agreed, not what the court thought that they should have agreed, it is not the function of a court to relieve a party from the consequences of imprudence or poor advice

18. The Tribunal would expect any lease to make provision for the repair and maintenance of the Building specifying the respective obligations of landlord and the tenants. A landlord would normally expect to be compensated for the costs incurred in repairing and maintaining the building. Turning to the three points raised by the Respondent, we are satisfied as to how the lease should be construed:

(i) The wording in respect of the repair and maintenance of the common parts is not entirely clear. However, there is nothing in the lease to distinguish between the repair and maintenance of (a) the hallway as distinct from (b) the staircase. The lease refers to the sums expended by the Lessor on "the maintenance and repair of the common staircase and the lighting and cleaning thereof". The Tribunal is satisfied that this clause relates to both the hallway and the staircase. The hallway is part

of the access to the staircase. There is nothing in the lease to support the Respondent's contention that she is only liable for the hallway and not the staircase. The lease rather makes express reference to her liability in respect of the staircase.

(ii) The Tribunal accepts that the lease makes no reference to the repair and maintenance of the front garden. However, she has a right of access along the front pathway to the front door. This must be kept in a good state of repair and must not be obstructed. Possession of the front garden is retained by the Lessor. The Lessee is obliged to contribute to "the cost of the maintenance of all external parts of the said building". The Tribunal is satisfied that this provision extends to the Lessor's costs in maintaining the front garden and pathway. This area is small. The cost of maintaining it is modest. The shrubs need to be cut back so that the tenant has unobstructed access to the front door.

(iii) The lease makes express provision for the Lessee to contribute "the fees paid by the Lessor for the management of the building". The Lessor is therefore entitled, but not obliged, to employ managing agents and charge a management fee. Where the landlord does not employ managing agents, we are satisfied that the landlord is entitled to make a modest charge in respect of the costs that he has incurred in managing the Building. Mr Akowacz is currently managing the building on behalf of the landlord in his capacity as a Deputy appointed by the Court of Protection. A managing agent would commonly charge an annual management fee of £300 to £450 per unit for managing a building. The charge for this Building would be likely to be at the higher end of the scale. There are only three flats. Whilst limited repairs may be required and modest services provided, the overall management fee is not attractive for any professional managing agent. When a landlord manages a building himself, any Tribunal will want to satisfy itself that the costs claimed in respect of management costs are reasonable. The management costs claimed in the current case have been modest.

The Service Charges in Dispute

19. As noted above, the service charges have not been demanded strictly in accordance with the term of the lease. The lease does not make any provision for an advance service charge. The lease rather provides for the tenant to pay 37.5% of the sums expended by the landlord on the specified services "on the quarter day next following the date on which the Lessor's auditor shall certify the total sum expended by the Lessor in respect thereof for the preceding year". The Respondent has not suggested that the landlord should incur (and pass on) the costs of an auditor's certificate given the limited costs that have been incurred.
20. As the parties are looking to the future, the Tribunal starts with the most recent service charges rather than the older ones when a somewhat different procedure was adopted. The Respondent has suggested that

she made an overpayment in 2014 which she was entitled to set-off against the further service charges that have become payable. The Tribunal has seen no evidence to support this suggestion. We therefore proceed on the basis that on 1 January 2015, the service charge account was in balance

The Year 2020

21. On 21 May 2021 (at A.86-87), the Applicant demanded payment of a service charge of £247.50, namely 37.5% of the following charges: (i) Gardening: £330; (ii) Electricity: £60; (iii) Management Fee: £200; (iv) Accountancy Fee: £60; (v) Sundries: £10. The breakdown of the expenses purports to be for the period 1 January to 31 December 2021. However, the only invoice provided is for gardening (at A.109). This is from Major Minor Fencing and is dated 27 June 2020
22. On 10 June 2021 (at R.43-44), the Respondent responded to this demand. She contended that she was only required to pay £10 in respect of the cost of lighting the hallway. She attributed 50% of the cost to the staircase. She agreed to pay £3.75 in respect of the sundries. She denied that that the lease required her to pay anything in respect of (i) the front garden; (ii) the management fee; and (iii) the accountancy fee.
23. The Tribunal is treating this as a demand for the service charge expenses incurred in the year 2020. We have found that the tenant is liable to contribute to the cost of maintaining the front garden and pathway. The cost of £330 is reasonable. We are further satisfied that a fee of £60 for the cost of lighting the hallway and staircase is reasonable. The Applicant pays this sum to the tenant of Flat 25. No invoices have been provided in respect of the sums claimed as (i) a management fee; (ii) an accountancy fee; and (c) sundries. The Tribunal assesses the Applicant's total costs of managing the Building in the sum of £250. The Tribunal allows a total of £640 in respect of which the Applicant is liable to pay 37.5%: £240. She has paid £13.75.

The Year 2019

24. On 9 May 2020 (at A.84-85), the Applicant demanded payment of a service charge of £472.50, namely 37.5% of the following charges: (i) Gardening: £270; (ii) Paving Repair: £660; (iii) Electricity: £60; (iv) Management Fee: £200; (v) Accountancy Fee: £60; (vi) Sundries: £10. The breakdown of the expenses purports to be for the period 1 January to 31 December 2020. Two invoices are provided. Mr Wood submitted an invoice for gardening, dated 11 May 2019 (at A.106). This specifies the work, most of which seems to have been executed in the w/c 26 August 2019. It is probable that the invoice should have been dated 11 May 2020. There is an undated invoice from Major Minor Building Services in the sum of £660 for relaying the garden paving.

25. On 2 June 2020 (at R.41-42), the Respondent responded to this demand. She contended that she was only required to pay (i) £10 for lighting the hallway; (ii) £3.75 for sundries; and (iii) £247.20 for the repairs to the paving. She denied that the lease required her to pay anything in respect of (i) the front garden; (ii) the management fee; and (iii) the accountancy fee.
26. The Tribunal finds that the following sums are payable: (i) Gardening: £270; (ii) Paving Repair: £660; (iii) Electricity: £60; and (iv) £250 in respect of the Applicant's costs in managing the Building. The Tribunal is satisfied that the tenant is liable for the gardening costs and that the invoice submitted by Mr Wood is reasonable. The Tribunal allows a total of £1,240, in respect of which the Applicant is liable to pay 37.5%: £465. She has paid £261.25.

The Year 2018

27. On 23 May 2019 (at A.82-83), the Applicant demanded payment of a service charge of £257.63, namely 37.5% of the following charges: (i) Gardening: £357; (ii) Electricity: £60; (iii) Management Fee: £200; (iv) Accountancy Fee: £60; and (v) Sundries: £10. The breakdown of the expenses purports to be for the period 1 January to 31 December 2019. One invoice is provided. Mr Wood submitted an invoice for gardening, dated 16 May 2019 (at A.104). The work was executed in August 2018 and May 2019.
28. On 31 May 2019 (at R.39-40), the Respondent responded to this demand. She contended that she was only required to pay (i) £10 for lighting the hallway and (ii) £3.75 for sundries. She denied that the lease required her to pay anything in respect of (i) the front garden; (ii) the management fee; and (iii) the accountancy fee.
29. The Tribunal finds that the following sums are payable: (i) Gardening: £357; (ii) Electricity: £60; and (iii) £250 in respect of the Applicant's costs in managing the Building. The Tribunal is satisfied that the tenant is liable for the gardening costs and that the invoice submitted by Mr Wood is reasonable. The Tribunal allows a total of £667, in respect of which the Applicant is liable to pay 37.5%: £250.12. She has paid £13.75.

The Year 2017

30. On 25 May 2018 (at A.80-81), the Applicant demanded payment of a service charge of £532.10, namely 37.5% of the following charges: (i) Gardening: £320; (ii) Statutory Electrical Inspection: £120; (iii) Electricity: £50; (iv) Management Fee: £200; (v) Accountancy Fee: £60; (vi) Gutter Works: £298.92; (vii) Plumbing/Gardening: £360; and (viii) Sundries: £10. The breakdown of the expenses purports to be for the period 1 January to 31 December 2018. Four invoices are provided:

(i) Mr Wood submitted an invoice for gardening and cleaning, dated 25 May 2018 (at A.101). The work was executed in August 2017 May 2018. £50 relates to cleaning.

(ii) Mr Wood arranged for an electrical inspection at a cost of £120 (see A.101). The report, dated 6 April 2018, is at A.96-100.

(iii) An invoice (at A.102-103) from WPS, dated 9 October 2017, in respect of gutter work.

(iv) An invoice (at A.102-103) from WPS, dated 11 May 2018, in respect of a burst pipe in the garden.

31. On 29 May 2018 (at R.36-38), the Respondent responded to this demand. She contended that she was only required to pay (i) £25 for lighting the hallway; and (ii) £33.30 for cleaning the hallway. She denied that the lease required her to pay anything in respect of (i) the front garden; (ii) the management fee; and (iii) the accountancy fee
32. The Tribunal finds that the following sums are payable: (i) Gardening/Cleaning: £320; (ii) Statutory Electrical Inspection: £120; (iii) Electricity: £50; (iv) Plumbing/Gardening: £360; (v) Gutter Works: £298.92; (ii) Electricity: £50; and (iii) £250 in respect of the Applicant's costs in managing the Building. The Tribunal is satisfied that the invoice submitted by Mr Wood in respect of the gardening and cleaning is reasonable. The Tribunal is further satisfied that the Respondent is obliged to contribute to the electrical inspection report, the gutter work and the burst pipe. No evidence has been adduced that the sums charged have been unreasonable. The Tribunal allows a total of £1,238.92, in respect of which the Applicant is liable to pay 37.5%: £464.60. She has paid £36.50.

The Year 2016

33. On 18 May 2017 (at A.78-79), the Applicant demanded payment of a service charge of £300, namely 37.5% of the following charges: (i) Gardening: £400; (ii) Risk Assessment: £120; (iii) Electricity: £110; (iv) Management Fee: £200; (v) Accountancy Fee: £60; and (vi) Sundries: £10. The breakdown of the expenses purports to be for the period 1 January to 31 December 2017. The Fire Risk Assessment is at A.94-95. Mr Wood has provided an invoice at A.95 for the period 18 May 2016 to 17 May 2017. The weekly charge of £10 (over 35 weeks) for "gardening, maintenance, planting". £50 is claimed for plants and gardening materials.
34. On 29 May 2017 (at R.33-35), the Respondent responded to this demand. She contended that she was only required to pay (i) £33.30 for cleaning the hallway and (ii) £25 for lighting the hallway. She denied that the lease

required her to pay anything in respect of (i) the front garden; (ii) the management fee; and (iii) the accountancy fee.

35. The evidence provided by Mr Wood is much less satisfactory for this year. He claims a weekly sum of £10 for his gardening. It is not entirely clear whether he had done the gardening because he wanted to, or because he had been required to do so by Ms Frewin. The shrubs would have required attention no more than twice a year. It seems that Mr Wood assisted the Applicant with the paperwork for this year. We reduce the sum claimed for gardening from £400 to £200. The Tribunal finds that the following sums are payable: (i) Gardening: £200; (ii) Risk Assessment: £120; (iii) Electricity: £50; and (iv) £250 in respect of the Applicant's costs in managing the Building. The Tribunal allows a total of £620, in respect of which the Applicant is liable to pay 37.5%: £232.50. The Respondent accepted a liability to pay £58.30, but contended that she had made an overpayment in 2014. She therefore made no payment.

The Year 2015

36. On 5 May 2016 (at A.75-76), the Applicant demanded payment of a service charge of £300, namely 33% of the following charges: (i) Cleaning of the Common Parts: £400; (ii) Gardening: £400; (iii) electricity: £50; and (iv) management charge: £50. It seems that this demand was prepared by Mr Wood on behalf of Miss Frewin. The gardening and cleaning services were being provided by Mr Wood.
37. On 20 May 2016 (at R.30-32), the Respondent responded to this demand. She contended that she was only required to pay (i) £33.30 for cleaning the hallway (namely 1/3 of £100, only 25% of the cost being attributable to the hallway) and (ii) £25 for lighting the hallway. She denied that the lease required her to pay anything in respect of the front garden.
38. The evidence provided by Mr Wood is again far from satisfactory. The Tribunal is satisfied that he provided some cleaning and gardening services. The Directions required the Applicant to disclose all relevant invoices. No invoices have been produced. The Tribunal finds that the following sums are payable: (i) Cleaning: £300 (reduced from £400); (ii) Gardening: £200 (reduced from £400); (iii) Electricity: £50 and (iv) £50 in respect of the Applicant's costs in managing the Building. The Tribunal allows a total of £600, in respect of which the Applicant is liable to pay 37.5%: £225. The Respondent accepted a liability to pay £58.30, but contended that she had made an overpayment in 2014. She therefore made no payment.

Previous and Subsequent Years

39. The Applicant has included in his Bundle a service charge demand, dated 2 May 2015 (at A74) for £345. In his Schedule (at A.57) this is stated to be the service charge for 2015. There are two problems to this contention. First, the lease does not permit a demand for an advance service charge. Secondly, there has been no reconciliation for any year between budgeted and actual expenditure. It is for this reason that the Tribunal has approached the demands as being for the payment of the sums due over the calendar year prior to the demand. The Tribunal accepted the Applicant's evidence that the service charge account was in balance on 1 January 2015. The Respondent produced no evidence to contradict this.
40. The Tribunal has not been provided with any evidence relating to the actual expenditure incurred in 2021 or any demand relating to this expenditure. It would have post-dated the issue of this application. It is probable that the Applicant will need to recompute any demand for this year in the light of the findings that we have made.
41. Mr Akowacz asked the Tribunal to determine whether the Respondent is required to reimburse the landlord for the solicitor costs which were incurred in the sum of £610.20. The invoice from the solicitor is dated 29 December 2021. Details of some of the work has been redacted. The Applicant has not demanded this sum as an administration charge. Mr Akowacz has not included it as part of the claim. It is difficult to see how this legal advice could be seen as incidental to any forfeiture proceedings. However, this is not an issue that this Tribunal is required to determine in these proceedings.
42. It was apparent at the hearing that there is an element of goodwill between the parties. The Applicant did not apply for a refund of the tribunal fees of £300 which he has paid. The Applicant does not intend to pass on the cost of these proceedings through the service charge. His concern is that he should be able to manage the service charge account on behalf of the landlord fairly and in a proportionate manner.
43. The Tribunal has construed how the service charge provisions in the lease should be operated. The Tribunal would urge the parties to look to the future. The service charges which have been demanded have been modest. They would have been significantly higher, had the landlord employed managing agents.

Judge Robert Latham
2 December 2022

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).