FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AC/LSC/2023/0340**
Property	**:**	**Simmay Villas, 152 Holders Hill Road, London NW7 1LU**
Applicants	**:**	**(1) Farhad Mohammadi and Shiva Samadi (flat 1)| (2) Wing Yee Mak (flat 2) (3) Pezhman Zomorodnia (flat 3) (4) Roberto Anzaldua Gi (flat 4)**
Representative	**:**	**N/A**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**N/A**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Prof R Percival**
Date of determination	**:**	**13 December 2023**
Date of Decision	**:**	**13 December 2023**

DECISION

The application

1. The Applicants apply for a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges by the Applicants as demanded by the Respondent in September 2023.

2. This the second of two applications by the Applicants relating to the property, which were active, in part, at the same time. The first was under the reference number LON/00AC/2023/0047, and was set down for hearing on 11 October 2023 ("the first application").

3. On 14 September 2023, directions were given for an accelerated timetable to allow the Tribunal to consider this application on 11 October 2023, when the first application was listed for hearing, or for us to make further directions. In accordance with those directions, the Applicants had provided a bundle, but the Respondent had not taken any action. At the hearing, the Respondent was represented by counsel, but it became apparent that counsel was unaware of this application, and was not instructed in relation to it.

4. As a result, the Tribunal (constituted by Ms R Kershaw and me) heard the first application on 11 October 2023, and gave further directions for the determination of this application. Both parties agreed that it should be dealt with as a paper determination. Our decision on the first application was provided to the parties on 16 October 2023.

5. This determination is therefore made on the basis of the existing bundle prepared by the Applicants, and the landlord's comments on the Scott Schedule. The papers for the first application are also available to me, and I have had regard to them where appropriate.

6. Relevant statutory provisions are set out in the Appendix to this decision. The legislation referred to may also be consulted at:
https://www.legislation.gov.uk/ukpga/1985/70/contents
https://www.legislation.gov.uk/ukpga/2002/15/contents

The property

7. The property is a mid-20th century house converted into four self-contained flats.

The issues and determination

8. The Applicants exercised the right to manage and the RTM company acquired the right to manage on 10 November 2022.

9. There is no dispute as to what is or is not covered by the service charge obligations in the lease.

10. The service charge items in dispute are those dated 4 September 2023. A copy of the demand sent to flat 1 has been provided in the bundle. Although it is clearly being presented as a service charge demand – it is addressed to Mr Mohammadi and Ms Samadi at flat one, it is accompanied by the service charges summary of tenant's rights and obligations, it divides the total by four, and the covering letter demands payment by the addressees – it is expressed as "a copy of the final accounts sent to the RTM company".

11. The document gives the overall expenses upon which the individual service charges are based, headed "internal expenses", and the share owed by the lessees of flat one (with a figure for alleged arrears). I infer that the same demands was sent to each of the other flats. A similar document was sent to the RTM company on the same day, with an identical list of "internal expenses". That document shows the division between each flat, and the alleged arrears owed by three of the four flats.

12. Documents attached to these demands were a planned preventative maintenance schedule dated May 2021 prepared by JMC, chartered surveyors and property consultants and a fire risk assessment report, dated 13 May 2021 prepared by Crescent Safety. Neither appears to throw any light upon the timing of the work or the invoicing upon which the Respondent relies to justify these service charges.

13. It is not necessary to outline further the competing positions of the parties.

14. The "period of expenses" in the demands is given as "December 2022 – handover". It is not clear what is meant by "period of expenses", but on the face of it, the "period" is presented as that to which the costs relate, and it is after the acquisition date.

15. The first application was concerned with the service charge years 2022 and 2023. The Respondent at and before that hearing unsurprisingly conceded that all of the contested service charges for the year 2023 were not recoverable.

16. The Scott schedule for the latter year prepared for the hearing of the first application included items for common parts cleaning, common parts electricity, bin cleaning, fire health and safety testing and services, fire health and safety risk assessment, window cleaning, accountant fees and management fees. Against all of these, the Respondent wrote "agreed".

17. Most of these items as they appear in the Scott schedule for this application appear to be covered by the concessions clearly made at the first application. It is true that, without invoices, it is impossible to entirely exclude the possibility that the items covered in this application are not the same as those covered in the first application. But, in the first place, that they are different would be inexplicable – why weren't they charged as part of the service charge demands subject to determination (and conceded) in respect of the first application, but were instead demanded de novo nine months after the end of the service charge year?

18. Secondly, given the circumstances of these two applications, if the Respondent had wished to limit the range of his concession given in both the Scott schedule and orally by counsel in the hearing, it should have done so. In the absence of such a limit, the Applicants, and the Tribunal, are entitled to rely on the concessions. At the very least, if the Respondent thought that these items were not covered by the concessions, it should have explained why that was the case. It has not done so.

19. The Respondent is not entitled to resile from the concessions made in the first application. This disposes of the items listed in paragraph 16 above without more. I add that the fact that the item on this application is described as "common parts cleaning *and gardening*" does not assist the Respondent, in the face of the Applicants uncontested evidence that there is no garden.

20. That leaves the drone survey and the handover fees.

21. As to the former, the comment made in the Scott schedule by the Respondent is "was instructed prior to RTM takeover and is recoverable and a final cost".

22. That it was instructed before the acquisition date does not make it recoverable, if the expenditure was incurred after the acquisition date. If (as is almost certainly the case), the acquisition fee was known before the drone survey was instructed, or beyond cancellation, then it should not have been instructed, or should have been cancelled. If, in the very unlikely event that the Respondent entered into an un-cancellable contract for it before the acquisition date was known, then that risk falls on the Respondent, not the Applicants.

23. Further, why would the Respondent think it necessary to have a drone survey? It is clearly an unusual step, and one that requires explanation. There is none before the Tribunal.

24. As to the handover fee, as the Respondent expressly recognises, it is not something properly recovered through the service charge. Whether it is

recoverable as a cost against the RTM company, and where the members of the company stand in relation to such a charge, are not matters for this Tribunal, which is exercising the jurisdiction under section 27A of the 1985 Act. The same applies to the apparent service charge demand of the RTM company (which, of course, cannot be a service charge demand).

Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A, and reimbursement of application fee

25. The Applicant applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

26. It is highly doubtful whether any costs, if there are any, could be charged to the Applicants either through a service charge or as an administration charge. But to avoid any possibility of doubt, I make both orders. The considerations to be taken into account in respect of the orders are set out in the first application, and I do not repeat them here.

27. Finally, of the Tribunal's own motion, I make an order for the reimbursement by the Respondent of the Applicants application fee of £100. The Respondent, in continuing to defend this application, has acted unconscionably, and an order to reimburse the application fee is appropriate in those circumstances.

28. I add that, more generally, the conduct of the Respondent is redolent of an attempt to punish, or extract value from, tenants who have successfully exercised the right to manage. This is not a conclusion that has influenced any of my conclusions above.

29. *Decision*: The Tribunal orders

(1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant;

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished; and

(3) under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicant's application fee.

Rights of appeal

30. 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 London regional office.

31. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

32. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

33. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 13 December 2023

Appendix of relevant 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 provision 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court , residential property tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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]1 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).