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| Crest |  | FIRST-TIER TRIBUNAL  **PROPERTY CHAMBER (RESIDENTIAL PROPERTY)** |
| **Case Reference** | **:** | **LON/00BE/LSC/2021/0237**  **CVP:REMOTE** |
| **Property** | **:** | **11 Mortlock Close London SE15 2QE** |
| **Applicants** | **:** | **London Borough of Southwark** |
| **Representative** | **:** | **Mr J Walker** |
| **Respondent** | **:** | **Ms J McEwen** |
| **Representative** | **:** | **In person** |
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| **Type of Application** | **:** | **s27A Landlord and Tenant Act 1985** |
| **Tribunal** | **:** | **Judge F J Silverman MA LLM**  **Mr T Sennett MA FIECH** |
| **Date of hearing** | **:** | **24 March 2022.** |
| **Date of Decision** | **:** | **28 March 2022** |

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| **DECISION**   1. **The Tribunal determines that the estimated service and administration charges proposed by the Applicant for the first three quarters of the financial year 2020-21 are reasonable.** 2. **The Respondent is ordered to pay to the Applicant the sum of £2,181.20 in respect of her liability to pay advance service and administration charges for the first three quarters of the accounting year 2020-2021 as demanded by the Applicant.** 3. **The matter is re-transferred back to the Shoreditch and Clerkenwell County Court.** |
| **This has been a hearing by remote video link which has been consented to by the parties. The form of remote hearing was CVP:REMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described above.** |

**REASONS**

1. The Applicant is the landlord and reversioner of the property known as 11 Mortlake Close London SE15 2QE (the property) of which the Respondent is the tenant by assignment holding under a 125 year lease of the property dated 28 October 1991.
2. By clause 2(3) and the Third Schedule of the lease the tenant covenants to pay service charge and reserve fund contributions by quarterly instalments in advance (pages 60, 77 & 78).
3. In accordance with the terms of the lease (page 77) the Applicant issued a demand for the estimated sums due for the first three quarters of the accounting year 2020-2021 which the Respondent has failed to pay.
4. Despite reminder letters being sent to her by the Applicant (pages 27, 29, 31) the Respondent failed to make payment and proceedings were issued against her in the Shoreditch and Clerkenwell County Court which were then transferred to the Tribunal by an order of the County Court made on 18 June 2021.
5. The only matter for determination by the Tribunal is the reasonableness or otherwise of the estimated service charges. Other issues relating to ground rent, interest and costs will be remitted back to the County Court for its consideration.
6. This matter falls to be determined under s27 Landlord and Tenant Act 1985 because it concerns the liability of a person to pay for an item which falls due under the service charge provisions of the lease.
7. Directions were issued by the Tribunal on 18 October 2021 (page 13).
8. The Tribunal received and read the electronic bundles of documents filed by the Applicant, page references in this document relate to those bundles.
9. The hearing took place by a remote video link to which the parties had previously consented or not objected. The Respondent attended by telephone link only. Mr Walker, an employee of the Applicant, presented the case on its behalf.
10. In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property but was able to obtain an overview of its exterior and location via GPS software.
11. The Respondent had filed a defence to the County Court summons in which she claimed that she objected to making payment because the Applicant had failed in its duty to supply her with heating and hot water. Under the Tribunal’s Directions the Respondent had been required to provide disclosure to the Applicant and to clarify her case by giving details of her objections and evidence in support of her allegations. Although she had attended the Directions hearing she had since then taken no active part in these proceedings, and had not supplied the Applicant with any details of her case or documents in support.
12. As a result of the Respondent’s failure to comply with the Tribunal’s Directions, the Applicant had on 14 January 2022 made an application to bar the Respondent from taking any further part in the proceedings. That application was not on the file available to the Tribunal for the hearing. To date the Applicant had not received any response to its application and the Tribunal therefore assumed that the Respondent remained on the record and was entitled to take part in the proceedings.
13. The amount claimed in the County Court summons included sums attributable to costs, interest and ground rent none of which are within the Tribunal’s current jurisdiction. Having deducted these items from the original amount claimed, Mr Walker said that the total sum under discussion in the present Tribunal case was £2,181.20.
14. At the Tribunal’s request Mr Walker explained the history of this case and the steps which had been taken to recover the sums due from the Respondent (page 43). The Respondent had made no attempt to make payments by instalments and there was no record of her having raised queries about the invoice.
15. The Respondent was then invited to question Mr Walker but chose instead to recite her reasons for non-payment. She said that she had moved into the property in 2005 and had not had heating or hot water until December 2020. The Applicant was required to supply these amenities through a communal system and she had always paid for them despite not receiving them. On receipt of the invoice under discussion in these proceedings she had decided not to pay for a service she was not receiving. She said she had a large quantity of evidence accumulated over the years to show that she had frequently complained about the lack of heat and water and that nothing had been done by the Applicant to resolve the situation. She said that she had obtained legal advice about her case but did not fully explain why she had not engaged further in the proceedings.
16. Mr Walker for the Applicant said that the present invoice related to a period after the heating and water problems had been resolved and covered a period during which the Respondent would have been receiving the services to which she was entitled under the lease. He explained that the sums in the disputed invoice were merely estimates of the expected costs and that the final accounts for the service charge year in question would have been produced by September 2021. The Respondent would have been able to challenge the final accounts when they were received. Similarly, if she wished to challenge previous years’ accounts she could do so by making an application to the Tribunal herself.
17. Although the Tribunal does understand and sympathise with the Respondent ’s concerns about the previous lack of heat and water at the property, the facts remain that during at least part of the period covered by the disputed invoice she had received these services. She has not challenged the validity of the invoice nor its amount, has failed to take any active part in these proceedings and has failed to produce any of the evidence which she says is in her possession in support of her case.
18. In these circumstances the Tribunal is given little option but to find that the estimated service charges are reasonable. The Respondent is therefore liable to pay to the Applicant the sum of £2,181.20 and the Tribunal makes an order to that effect.
19. The Respondent is recommended to take legal advice about her liability for past and future service charges.
20. **The Law**

**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 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 tribunal or the Upper Tribunal, 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 a county court;

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

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

(c) in the case of proceedings before the Upper Tribunal, 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 a 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 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).

**Section 47 Landlord and Tenant Act 1987**

(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a)the name and address of the landlord, and

(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

(a)a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy 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.

**21B Notice to accompany demands for service charges**

(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.

**S22 Landlord and Tenant Act 1985**

22 Request to inspect supporting accounts &c.

(1)This section applies where a tenant, or the secretary of a recognised tenants’ association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman

**Date 28 March 2022**

Note:

**RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.