FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/LSC/2021/0045**
HMCTS code	**:**	**P: PAPERREMOTE**
Property	**:**	**28 Newlyn Road, Tottenham, London N17 6RX**
Applicant	**:**	**Ms K Mumford (Flat 28) (1)** **Ms H Pool (Flat 28b) (2)**
Representative	**:**	
Respondent	**:**	**YouMove Ltd**
Representative	**:**	**Fountayne Managing Ltd**
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 D Brandler** **Mr K Ridgeway MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**27th May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in the Applicants' bundle of 68 pages, and the Respondent's bundle of 243 pages the contents of which we have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) In relation to the disputed estimated service charge items, the tribunal makes the determinations as set out under the various headings in this Decision and summarised in the table set out at Annex 1.

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

(3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the estimated service charge year 2021.

The background

2. The property which is the subject of this application is a terraced house converted into two 2-bedroom flats.

3. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

4. The Applicants each hold a long lease of their flat within the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

5. In their consideration of the application, the Tribunal identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of estimated service charges for 2021 as set out in the Applicants' schedule, to which the Respondent has added their response.

   (ii) The percentage to be paid by each Applicant by the terms of their respective leases

   (iii) Whether an order should be made under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

   (iv) Whether the Respondent should reimburse the tribunal fees paid by the Applicants

6. Having considered all of the evidence from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Leases

7. The ground floor lease is dated 20th October 2014 between Youmove Ltd (1) and SLR Investments Ltd, for a term of 101 years. [35-59]

8. Paragraph 29 of the Fourth Schedule states: "*29. Insofar as the same do not fall within the amount of the Rent to be paid to pay a fair proportion to be determined by the Surveyors, that proportion being no more than 20% of the Total Service Cost, for the time being of the Landlord whose decision shall be binding upon the Tenant of the expenses payable in respect of constructing repairing rebuilding cleansing and maintaining all roads pavements party walls party structures Service Conduits and other things the use of which is common to the Premises and to other property*" [49].

9. However, at paragraph 1.3 of the Seventh Schedule an uninitialed amendment has been made in pen, crossing through the "2" (of 20%) and replacing it with a "5" (for 50%). The unaltered paragraph reads "*1.3 "The Service Charge" means 20% of the Total Service Cost*" [56]. There is no signature on the amendment, nor any other apparent instrument permitting this amendment to the lease.

10. Paragraph 1.4.1 of the Seventh Schedule has similarly been amended by pen by crossing through the "2" (for 20%) and replacing it with a "5" (for 50%). The unaltered paragraph reads "1.4.1 In the event of it being necessary for the Landlord to undertake urgent work to the Building or the Common Parts involving major expenditure not covered by the Interim Charge the Landlord shall have the right forthwith to demand from the Tenant the proportion of such expenditure, that Proportion being no more than 20% of the Total Service Cost…" [56]. There is no signature on the amendment, nor any other apparent instrument permitting this amendment to the lease.

11. The first floor lease is dated 12th December 2014 between Youmove Ltd (1) and Gladstar Ltd (2) for a term of 101 years [60- 84]

12. Paragraph 29 of the Fourth Schedule is identical to that term in the ground floor lease and details the requirement for the first floor flat to be responsible for "*no more than 20% of the Total Service Cost…"* [75]

13. Paragraph 1.3 of the Seventh Schedule is identical to that term in the ground floor lease but has not been altered and reads "*1.3 "The Service Charge" means 20% of the Total Service Cost"* [82]. Paragraph 1.4.1. of that schedule has not been altered for the first floor flat and which maintains a maximum liability of 20% contribution [82]

The % liability for each leaseholder

14. This issue has been raised by the Respondent in the witness statement of Simon Stern, a director of the Respondent, signed on 3rd May 2021 [23-33]. In paragraph 20(d), Mr Stern asserts that *"The Lease of the first floor flat mentions that the Leaseholder is required to contribute only 20% (the ground floor lease requires a contribution of 50%) this appears to be an oversight and a mistake as both of the flats are identical and its unfair for the freeholder to remain with a liability of 30%, the Lease allows for the Freeholder to amend the allocations as long as those are fair and reasonable and on that basis we have divided the charges to 50% each, we request that the Tribunal confirm the liability of both flats for 50% each"* [33].

15. Having considered the leases of both flats submitted by the Respondent, as well as the Deed of Variation dated 2nd March 2015, the Tribunal concluded as follows.

16. There was no apparent instrument permitting the amendment in paragraphs 1.3 and 1.4.1 of the Seventh Schedule of the ground floor lease which purported to change the liability from 20% to 50% of the total service charge. It was in any event inconsistent with paragraph 29 of the Fourth Schedule of that lease in which the 20% remains without alteration.

17. The Deed of variation which has been sent as a separate document, apparently by the Applicants, but does not appear in either of the bundles, relates to the ground floor flat. However, it does not assist in explaining the partial alteration of the lease to 50% contribution. The only variation at clause 3 of schedule 1 is "*The Parties hereby agree and confirm that clause 8 of the First schedule of the Lease shall be deleted*".

18. The First schedule sets out what is included within the grant of the ground floor flat and clause 8 refers to the loft space.

19. The Tribunal therefore determines that unless the Respondent can provide evidence of an Instrument permitting the alterations to the terms of the ground floor lease, or anything justifying their decision to interpret the first floor lease as being responsible for 50% of the Total Service Charge, each flat remains obliged to contribute no more than 20% of the Total Service Charge.

Communal Electric/Lighting £60.00 claimed

20. The Applicants state that there is only one motion and light sensor lightbulb. They say that for an hour's use for 365 days per annum the charge would be £3.52 and so the amount charged is excessive. In any event, the bulb in question is connected to the supply of electricity for the first floor flat, and has already been paid by the leaseholder, so why should the Respondent charge for something they are not being charged for.

21. The Respondent does not dispute that the electricity currently is supplied from the first floor flat, but that emergency lighting and fire alarm system will have to be installed, which will increase the consumption and it is not fair or reasonable for one leaseholder to pay the entire cost for the communal area. That this charge is permissible under requirements to pay charges under the terms of the lease, and in any event this is just a budget cost at this stage with no accounts having been reconciled.

The tribunal's decision

22. The tribunal determines that the amount payable in respect of estimated communal electric/lighting for 2021 is £60.00. Each Applicant to pay 20% of the charge in accordance with the terms of their leases. Amount payable per flat is £12.00 .

Reasons for the tribunal's decision

23. It is reasonable that the electric/lighting charges are shared between the two leasehold flats, there will be increased consumption because of the planned fire alarm and emergency lighting. The leaseholders are each responsible for 20% of the estimated charge, as set out above.

Fire Prevention System Service £570.00 claimed

24. The Applicants say this cost is excessive as it is only for a small communal entrance and not a block. They suggest £200 plus VAT and have provided an alternative quote for this service. That quotation is for inspection only, not for installation.

25. The Respondent states fire safety standards require emergency lighting and smoke detectors. That bi-annual inspections will be required at a cost of £120 plus VAT.

The tribunal's decision

26. The tribunal determines that the amount payable in respect of the fire prevention system service is reasonable and the estimate is payable. Each flat to pay 20% of the estimated charge. Amount payable per flat is £114.

Reasons for the tribunal's decision

27. The quotation provided by the Applicants does not include installation and is not comparable to the Respondent's estimated cost

28. It is reasonable and is required by safety regulations.

General Maintenance £250 claimed

Gutter and Roof Maintenance £350 claimed

29. These have been agreed by the Applicants and the Tribunal cannot interfere with their agreement.

Window Cleaning £100 claimed

30. The Applicants state that they have declined this service, and that the Management company have acknowledged this. However, the Respondent does not appear to acknowledge this in his response.

31. In his response he states that this is a requirement under the terms of the lease, and in any event it is only a budgeted sum.

The tribunal's decision

32. The tribunal determines that the amount payable in respect of the estimated charge for window cleaning per flat is £20.

Reasons for the tribunal's decision

33. Window cleaning is chargeable under the terms of the lease, but it was not clear whether the parties had agreed that no chargeable service would be provided in this regard. The Tribunal determine that £100 per annum is not unreasonable, and on the basis of the lack of agreement, each flat is to pay 20% contribution to the estimated charge £20.

Accounts £420 claimed

34. The Applicants say that this charge lacks clarity and is excessive.

35. The Respondent says that under the terms of the lease an account must instruct an independent accountant, and that this is a budget amount only.

The tribunal's decision

36. The tribunal determines that the amount payable in respect of estimated accounting costs at a rate of 20% each flat is payable. Amount payable per flat is £84.

Reasons for the tribunal's decision

37. This is a requirement of the lease and an estimated charge of £420 is not unreasonable.

Management fee £580.00 claimed

38. The Applicants say that they have looked at other companies which charge £150-160.

39. The Respondent says that as there is no management in place, this cost reflects the necessity of setting up new management services. He says that the alternative quote is for an existing management system in place, but the property has nothing in place currently. They have said that future charges, after set up, would be in the region of £250 pa.

The tribunal's decision

40. The tribunal determines that the amount payable in respect of estimated management fee is reasonable and payable at a rate of 20% per flat. Amount payable per flat is £116.

Reasons for the tribunal's decision

41. The fee to set up the management of the property is not unreasonable. The quote from the Applicants does not include setting up a new management system.

Out of hours service £100 claimed

42. No detail is provided about what sort of incidents would require such a service. Nor is any detail provided of the company providing such a service. The Respondents say this is a budget figure to ensure that out of hours service is available when the office is closed.

The tribunal's decision

43. The tribunal determines that the amount payable in respect of an out of hours service is £0

Reasons for the tribunal's decision

44. This suggested service is difficult to reconcile with the terms of the lease, and the Tribunal could not envisage what out of hours service would be provided to leaseholders for an annual fee of £100.

Building Insurance backdated £3082 claimed

45. The parties have agreed a figure of £1138. The Tribunal cannot interfere with an agreement.

Ground rent backdated

46. Ground rent is in within the remit of the Tribunal. .

Application under s.20C and refund of fees

47. This is included in the application form.

48. The Respondent says that the leaseholders "*were supplied sufficient and detailed information relating to the charges*" and that this application has been "*a time-wasting process*" [33]. They ask that no order is made under s.20C or 5A so that they can recover their costs.

49. The Tribunal finds that the application was made on appropriate grounds after the Applicants had attempted to resolve issues. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

50. Having considered the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

Name: Tribunal Judge Brandler **Date:** 27th May 2021

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).

APPENDIX 1: Summary of the Service Charge Decision

Estimated Service Charge in dispute 2021	Amount claimed by Respondent	Amount agreed by Applicant	Tribunal's decision (if different)	20% payable per flat
Communal electric lighting	£60		£60	£12
Fire Prevention system service	£570		£570	£120
General Maintenance	£350	£350		
Gutter and Roof Maintenance	£250	£250		
Window cleaning	£100		£100	£20
Accounts	£420		£420	£84
Management fee	£580		£580	£116
Out of hours service	£100		Not payable	
Buildings insurance backdated	£3082	£569 per flat		

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 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 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.

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.

Landlord and Tenant Act 1987

Section 47

(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 [or 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 [or tribunal], there is in force an appointment of a receiver or manager whose functions

include the receiving of service charges [or (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.

Section 48

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent [, service charge or administration charge] otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent [, service charge or administration charge]1 shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal] , there is in force an appointment of a receiver or manager whose functions include the receiving of rent [, service charges or (as the case may be) administration charges] from the tenant.

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).