



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

Case reference : **LON/00BG/LSC/2023/0208**

Property : **15, Breezers Court, 20 The Highway,
London E1W 2BE**

Applicant : **Janet Glover**

Representative : **Not represented**

Respondent : **20 The Highway Management Ltd**

Representative : **Prime Property Management (managing
agent)**

Type of application : **Application for a determination of
liability to pay and reasonableness of
service charges**

Tribunal : **Judge Rosanna Foskett**

Date of Directions : **6 November 2023**

DECISION

Unless directed otherwise, all communications to the tribunal, including the filing of documents and bundles, should be by **email ONLY**, attaching a letter in Word format. Emails must be sent to London.RAP@justice.gov.uk. The attachment size limit is 36MB. If your attachments are larger than 36MB they must be split over several emails.

If a party does not have email, access to the Internet and/or cannot prepare digital documents, they should contact the case officer about alternative arrangements.

Background

- (1) The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and reasonable in relation to a plumber's investigation at Breezers Court, 20 The Highway, London E1W 2BE ("**the Property**"). Relevant legislative provisions are set out at the end of this Decision in the Appendix.
- (2) The applicant is the leaseholder of Flat 15 within the Property ("**the Flat**"). The landlord is 20 The Highway Management Ltd ("**the Landlord**") and has appointed Prime Property Management as managing agent ("**Prime Property**").
- (3) The applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (4) Directions were made on 22 June 2023.
- (5) No party has requested an oral hearing and accordingly, as per the directions of 22 June 2023, this application has been determined on the papers on the basis of the limited information with which the tribunal has been provided.
- (6) There has been limited compliance with the directions, which is unsatisfactory, particularly because the tribunal has not been provided with a full copy of the lease governing the parties' relationship, namely the original lease dated 29 November 1985. However, the sum in dispute is small (less than £400) and the tribunal considers that it can and should, in accordance with the overriding objective, determine the dispute today on the basis of the information it has before it.
- (7) The tribunal has reviewed:
 - a. The application notice (which is undated and unsigned on the tribunal's system);
 - b. The Deed of Surrender, Re-grant and Variation between the applicant and the Landlord dated 19 February 2019;
 - c. The service charge account for Flat 15;

- d. An email from one of the applicants dated 5 November 2023 at 13.52, which was copied to Prime;
- e. The Landlord's comments on the Applicant's Schedule;
- f. The Applicant's reply to the Landlord's comments;
- g. A PDF called "Supporting Docs" from the Applicant;
- h. The Report to the Managing Agent from Building Response Ltd t/a WaterDamage.co.uk dated 3 December 2021 and the invoice of the same date.

Issues in dispute

1. The tribunal identified in the Directions that the issues to be determined relate to charges made in the service charge year 2022/2023 for the cost of an inspection by leak detection specialists appointed on behalf of the Landlord in connection with 3 water leaks into the Property's ground floor car park and in relation to water damage on the bathroom and kitchen ceilings in Flat 8.

Decision

2. The Tribunal accepts that the Landlord is entitled to commission investigative surveys, such as that performed by WaterDamage.co.uk, as part of its obligation to carry out all that is necessary for the maintenance of the Property.¹ The Tribunal is prepared to find that the costs of the WaterDamage.co.uk survey are in principle rechargeable to leaseholders as service charge.
3. However, the Applicant states that the cost of the survey (split between the 3 flats investigated) was simply added on to her service charge account without any prior consultation or demand.
4. The Landlord has provided no service charge demand showing the form in which it demanded the service charge in dispute from the Applicant (if it demanded it at all). The Tribunal therefore cannot be satisfied that the service charge was properly demanded; for example, the Tribunal cannot be satisfied that section 153 of the Commonhold and Leasehold Reform Act 2002 has been complied with.
5. The Landlord has explained that section 20 of the Landlord & Tenant Act 1985 does not apply to the costs of the survey because the survey does not constitute "*major works*" within the meaning of the Act. The

¹ The Landlord's comments on the Schedule refer to clause 6(j) of the original lease to this effect. As noted above, the tribunal has not been sent a copy of this document by either party, but has no reason to believe that the Landlord is not telling the truth about the obligation contained in it on which it relies.

Tribunal accepts this explanation because the investigatory works do not appear to constitute “*works on a building*”, bearing in mind the guidance given by Mr Nicholas Warren QC (as he then was), sitting as a High Court Judge, in *Marionette Limited v Visible Information Packaged Systems Limited* [2002] EWHC 2546 (Ch) at paras 90-100, the Court of Appeal in *Phillips v Francis* [2015] 1 WLR 741 and in Service Charges and Management, 5th edn, edited by Tanfield Chambers, at paras 11-06 to 11-07.

6. But it does not appear that the service charge has in any event been properly demanded (see paragraph 4 above).
7. The Tribunal considers that the WaterDamage.co.uk charge was reasonably incurred and was reasonable in amount, given (i) the identification of water leaks in the Property which plainly needed to be investigated and rectified and (ii) the absence of any alternative quotes showing that the sum charged by WaterDamage.co.uk was unreasonable in the circumstances.
8. However, there is no evidence before the Tribunal of why the cost of the survey was re-charged as service charge to only 3 flats under the terms of the lease, rather than apportioned between all flats in the Property.
9. The failure to produce a full copy of the lease has prejudiced the tribunal’s ability to consider the £50 charge properly, but it is prepared to accept that the Landlord was entitled to charge the administration charge to enforce the Applicant’s covenants under the lease (which the Landlord refers to in its comments on the Schedule). Such covenants are likely to include a covenant to the effect that the Applicant should not cause damage to other flats within the Property by reason of a lack of repair within the Flat. However, the Landlord has produced no calculation of the £50 charge or evidenced the costs against which it claims the Applicant must indemnify the Landlord.
10. Accordingly, the tribunal’s Decision is that:
 - a. In principle, the cost of the WaterDamage.co.uk survey is recoverable as service charge from those in the Property who pay service charges (in accordance with their respective proportions, which, the tribunal assumes, are set out in the relevant leases);
 - b. The survey was not “*qualifying works*” within the meaning of the Landlord & Tenant Act 1985;
 - c. But no proper demand has been made by the Landlord on the Applicant for the Applicant’s proportion of the survey cost as service charge;

- d. There is insufficient evidence to conclude that the £50 charge by way of “indemnity” is payable under the terms of the lease or that it was reasonably incurred or reasonable in amount;
 - e. Accordingly, at present, neither the £314 nor the £50 is payable by the Applicant as service charge.
11. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and an order in respect of litigation costs under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, in light of the fact that the Applicant has been successful in challenging the £314 and £50 charges purportedly charged by the Respondent as service charge.

Name: Judge Rosanna Foskett

Date: 6 November 2023

RIGHTS OF APPEAL

- 1 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.
- 2 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.
- 3 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.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Appendix

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 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.

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).